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VOTER SUPPRESSION AND CONTINUING
THREATS TO DEMOCRACY

Thursday, January 20, 2022

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 10:00 a.m., via Zoom, Hon. Steve Cohen [Chair of the Subcommittee] presiding.


Staff present: John Doty, Senior Advisor and Deputy Staff Director; Moh Sharma, Director of Member Services and Outreach & Policy Advisor; Cierra Fontenot, Chief Clerk; John Williams, Parliamentarian and Senior Counsel; Keenan Keller, Senior Counsel; Gabriel Barnett, Staff Assistant; Merrick Nelson, Digital Director; Kayla Hamedi, Deputy Communications Director; James Park, Chief Counsel for Constitution; Will Emmons, Professional Staff Member/Legislative Aide for Constitution; Abbie Petty, Counsel for Constitution; Matt Morgan, Counsel for Constitution; Betsy Ferguson, Minority Senior Counsel; Caroline Nabity, Minority Counsel; James Lesinski, Minority Counsel; Andrea Woodard, Minority Professional Staff Member; and Kiley Bidelman, Minority Clerk.

Mr. COHEN. Good morning. The Committee on the Judiciary Subcommittee on the Constitution, Civil Rights, and Civil Liberties will come to order.

Without objection, the Chair is authorized to declare recesses of the Subcommittee at any time.

I welcome everyone to today’s hearing on voter suppression and continuing threats to democracy. Before I continue, I’d like to remind all Members that we have established an email address that was previously shared and distribution lists dedicated to circulating exhibits, motions, or other written materials that Members want to offer as part of the hearing today.

I also ask unanimous consent that our Committee colleague, Representative Lucy McBath of Georgia, be allowed to participate in today’s hearing and that she is permitted to ask questions should a Subcommittee Member yield her time.

Without objection, so done.
Finally, I would ask all Members and Witnesses to mute your microphones when you are not speaking. This will help prevent feedback and other technical issues. You may unmute yourself anytime you seek recognition.

I'll now recognize myself for an opening statement. Earlier this past week, the nation commemorated the birthday of Dr. Martin Luther King on Saturday, and his national day of honor, Dr. Martin Luther King Day—which we owe a great debt of gratitude to our previous Chair, John Conyers, who labored for that 15 or 16 years to make it become law—on Monday, Dr. Martin Luther King Day, and it was right as a country that we do that right and it was right of John Conyers to initiate the idea and to continue persistently and doggedly to make sure it happened.

Many public figures and officeholders gave speeches and statements to honor Dr. King's legacy of leadership, and some of them went further to talk about what his leadership was about, to ensure civil rights for all Americans, to make us a better nation.

To truly honor Dr. King and in the way that I hear in church so often, to paraphrase, be of Dr. King and not just about Dr. King. We must defend the most fundamental right that he fought to secure for Black Americans and other historically oppressed people—the right to vote.

Yes, he was for the right to organize and have workers compensated properly and recognize being part of a union, and he was for healthcare as a basic civil right and for peace and for equitable treatment of all people.

The right to vote was the fundamental linchpin upon which it all rested. In his 1957 speech in May of 1957, he said, "The denial of this sacred right is a tragic betrayal of the highest mandates of our democratic tradition. And so our most urgent request to the President of the United States, every Member of Congress, is to give us the right to vote. Give us the ballot and we will no longer have to worry the Federal government about our basic rights." May of 1957, 65 years ago.

Distressingly, those words from 1957 apply today just as aptly as they did the moment that he made the speech and it does this moment that we live, as large segments of our nation's political and governing class appear ready to retreat from what had been a longstanding bipartisan commitment to protecting multiracial democracy since the enactment of the Voting Rights Act of 1965.

It's impossible to think of the Voting Rights Act without thinking of our dear colleague, John Lewis, who we all miss greatly. John Lewis, in the first march from Selma, was beaten and almost gave his life for the right to vote. Dr. King led the second march when the government came in and made sure it was successful rather than unsuccessful.

People went to Selma with Dr.—John Lewis for his memorializations of the march, his memory of the march, and people went and were touched and spoke about it, how they went with John Lewis to Selma, and then some of those same people voted not to continue the Voting Rights Act that he nearly gave his life for, that's named for him, the John R. Lewis Voting Rights Act.

As this Subcommittee has documented exhaustively through 13 hearings over the course of the last three years, voting rights for
Black Americans, Latino Americans, Native Americans, Asian Americans, disabled Americans, and other historically disadvantaged groups have once again come under significant threats in many parts of our country.

The extensive record we have built for those hearings show that many States have adopted laws making absentee voting harder, reducing opportunities for early voting, and closing polling locations in predominantly minority precincts, among other things.

According to the Brennan Center for Justice, between January 1, 2021, and December 7, 2021, more than 440 bills with provisions that restrict voting access have been introduced in 49 States in the 2021 legislative sessions.

These are the “most extraordinary,” numbers that the Brennan Center has seen in any years since it began tracking voting legislation in 2011.

Disturbingly, since 2020, we have also seen States changing their election administrative laws and processes to politicize the counting of votes already cast. Vladimir Putin has said it’s important—most important—who counts the votes.

In some cases, these measures could allow partisan actors to interfere with vote counts or even overturn the results. Beyond these already troubling trends is the fact that this redistricting cycle was the first one without the Voting Rights Act preclearance provision in effect. The results were predictable.

For example, in Georgia, several lawsuits have been filed challenging the State’s new congressional legislative maps, alleging that they violate section 2 of the Voting Rights Act by denying Black voters the equal opportunity to participate in the political process and to elect their candidates of choice by diluting the strength of their voters and their votes.

These maps also strip minority elected officials of power by targeting their districts for elimination. In Tennessee, Congressman Cooper’s district was divided into three different districts, and instead of being a district with 28 percent minority impact, it now is a district with 12 percent, and the remaining 16 percent are scattered through two other predominately rural precincts where there will be 16 percent Black vote and 10 percent Black vote.

Notably, people of color accounted for all Georgia’s population growth between 2010–2020, a time when the State’s White population declined.

Yet, its redistricting plans not only failed to capture this back, but actively sought to remove minority voters from majority-minority districts and place them in the majority-White districts. Cracking is what that’s called.

In Texas, the Department of Justice filed a lawsuit to challenge the State’s redistricting plans as violations of section 212.

Texas created two new majority White congressional districts, eliminated a Latino opportunity district, and failed to create a district capturing growth of the Latino electorate in Harris County, all despite the fact that 95 percent of the population growth in Texas during 2010–2020 was a result of growth in this minority population.

We will hear from our Witnesses today about many other examples of how States besides Georgia, Texas, and Tennessee have ma-
nipulated district lines for Federal, State, and local offices to deny voters of color equal opportunity to participate in the political process and elect the candidates of their choice.

Make no mistake, at this moment our nation’s democracy stands on the precipice. We can talk all we want about the Founding Fathers, that they’re turning over.

We find ourselves in this position not only because of a procedural anachronism in the Senate, but because one of the two major political parties has chosen to reverse its historic support for strong voter rights protection, has instead chosen voter suppression as a political strategy.

As recently as 2006 Congress was able to reauthorize the Voting Rights Act by an overwhelmingly bipartisan vote, 98 to nothing in the Senate—16 of those Senators are still in the Senate and they didn’t vote for the John R. Lewis Voting Rights Act this time—and 390 to 33 in the House, over 10 to one.

President George W. Bush pushed for the law’s passage, and he signed it into law. Now, it appears that many on the other side of the aisle have come to the cynical conclusion that it no longer pays politically to protect voting rights. They want power at all costs. Process doesn’t matter except how it helps them get power. Indeed, they seem to have come to the conclusion—erroneously, in my view—that they can only win if they suppress the right to vote of certain Americans.

This is a tragedy. It’s a tragedy for our country that some of its leaders have embraced the idea in the year 2022 that true multiracial and multiethnic democracy is a threat to them.

It is, indeed, as Dr. King put it two generations ago, a tragic betrayal of the highest mandate of our democratic tradition. We now face an ever-narrowing window to save our democracy.

We saw that door shut pretty close in the Senate. We’re two votes short of getting an extraordinary process—to allow it to continue, and 52 short of the unanimity that it saw in 2006.

Let us hope that there’s a crack in the door. The light shines through a crack.

Now, I’d like to recognize for an opening statement the Ranking Member, and the Ranking Member today is the gentleman from Texas, Mr. Roy, and I recognize Mr. Roy for his opening statement.

Mr. Roy. Well, I thank the gentleman, and I am, indeed, substituting for my good friend, Mike Johnson, who has a conflicting hearing. He is apologetic he can’t be here. He’s got at HASC conflict. He’ll be joining a little bit later.

We are all here with our own concerns about what we saw happen last night, and after last night’s failure in the Senate, here we are again.

This will be the seventh hearing that this Subcommittee has had in nine months on the Democrats’ race-baiting election bills, and that’s what these are.

Today’s hearing will use State redistricting efforts to continue to advance the false charge of voter suppression and threats to democracy. That’s what we’re going to hear today.

There will be cries that partisan gerrymandering that are conducted by both parties—that are conducted always by both parties—that are racial gerrymandering when they’re conducted by the
GOP. These cries are all about crass political power because that’s what gerrymandering has always been since its formation.

We can talk about how to make districts more compact, how to make districts better represent the people. This is all about crass political power and using race for that purpose.

That’s not really what bothers me because that’s what I’m used to. It’s that the cynical use of racial fearmongering built on lies about bills being passed at the State level.

After last night’s failure in the Senate, another attempt—another failed attempt to defend massive legislation that Democrats have unilaterally jammed through the House multiple times now specifically designed to thwart fully legitimate State reforms that are good faith attempts to ensure ballot and election integrity.

Yet, they will lie and claim that these good faith attempts are designed to suppress voting. That’s not at all what these are about.

For example, Speaker Pelosi said about Republicans that they, quote, “voted to aid and abet the most dangerous campaign of voter suppression since Jim Crow.” This is outrageous, and it was doubled down by the President last night, which I’ll get to in a minute.

This is a purposeful misinformation campaign by my Democrat colleagues and by a Democrat in the Administration to lie and suggest that opposing the following is voter suppression: Requiring voter identification, ballot harvesting—a practice that risks third parties having undue influence or control on a person’s voter ballot—limiting mail-in ballots to requested ballots and requiring IDs to use them, not having, perhaps, all-night ballot drop options.

That was the charge in Houston in a hearing I was in down in the Texas legislature. Having fewer early voting days compared to, say, another State.

That’s what’s at the basis of all these charges, that these things are somehow voter suppression. The misinformation campaign is designed to make Americans believe they are for protecting voting rights. They use that term on purpose—voting rights—because who could possibly be against voting rights?

For example, allow me to quote from acclaimed election history and law experts Jerry West, Nick Saban, Paul Tagliabue, and company.

In the last year, some 20 States have enacted dozens of laws that restrict voting access and allow local officials or State legislatures to interfere inappropriately with Federal election outcomes.

Motivated by the unanticipated outcomes of recent close elections conducted with integrity, they say, these State laws seek to secure partisan advantage by eliminating reliable practices with proven safeguards and substituting practices ripe for manipulation. No doubt these famed election law experts spent the weekend reading the Federal legislation for which they were lobbying because I got the 700-page bill at 11:30 p.m. last Thursday night before voting on it on Friday, right before we got the rule.

I assume they read it thoroughly over the weekend as my staff stayed up into the middle of the night to actually see what was in the bill.

I assume, too, that they know, for example, that the bill would lead to completely outlawing or eliminating voter identification.
Do they know that four in five Americans—80 percent—support requiring voters to show photo identification to cast a ballot? I know my colleagues are sure fine with everybody having to show a voter identification with vax cards across this country, including the nation’s capital.

Do they know that Delaware and Connecticut require photo or nonphoto ID and more—I’m certain that they have studied the intricacies of Texas law before disparaging it.

I’m sure they spent time looking at that, or, say, studied the Georgia election law at least a little better than studying the University of Georgia’s defense.

Do they know that Georgia has 17 days of early voting and that President Biden’s home State of Delaware only has 10 days? Are we looking at Delaware?

This puts Delaware on par with Texas which, notably, still has more than Maryland, eight days; Jersey, nine days; New York, nine days; and Connecticut, zero days. Zero days in that bastion of wingnuttery, Connecticut. Georgia has no-excuse absentee voting. Joe Biden’s home State of Delaware requires an excuse for absentee voting.

Now, I’m fine with Delaware having that option. It’s actually a reasonable debate. Does that make Delaware the target of this Committee’s wrath? You don’t hear them complaining about Delaware.

You don’t see the Biden Administration bringing Delaware to court. You don’t see the Biden/Garland Department of Justice suing Maryland for their District maps in which Maryland Governor Larry Hogan called it the nation’s most gerrymandered map as the State’s legislature decided to override his veto.

Why are they doing this? Because they have to claim voting rights are being violated to try to save themselves politically because they know their radical leftist agenda, in which crime is skyrocketing, opioids are flooding into our country, cartels are empowered, China’s on the advance, vaccine mandates are crippling jobs, kids, and businesses, Russia is, potentially, invading Ukraine. All that is being rejected by the American people.

The truth is that it is easier today for Americans to vote than ever before in our nation’s history. Yet, Democrats tried to destroy the Senate filibuster on a partisan basis to do the following: Totally prohibit the use of voter identification, require States to allow felons to vote, create permanent paper ballot requirements, make political doxxing targets of donors to private organizations, use taxpayer dollars for political campaigns, and I could go on and on.

My Democratic colleagues are not interested in debating any of their failed policies destroying freedom in the lives and livelihoods of Americans but, rather, to sow fear.

President Biden said just yesterday, and I quote, “I’m not saying it’s going to be legit. The increase in the prospect of being illegitimate is in direct proportion to us not being able to get those reforms passed.” Further, “It all depends on whether or not we are able to make the case to the American people that this is being set up to try to alter the outcome of the election.”
Senator Schumer knew he wouldn't pass this bill. His purpose is not the legislation. The purpose is to delegitimize elections ahead of the game and to intentionally divide the country.

They spent four years on Russian collusion. Now, they're setting up the narrative for 2022 to use race baiting to create a toxic environment of distrust to delegitimize a possible GOP majority, and we should be better than that.

I yield back.

Mr. COHEN. Thank you, Mr. Roy. I’m sorry I didn’t catch all your remarks because I was riveted to the picture over your head. Is that Ben Hogan?

Mr. ROY. It is Ben Hogan. My dad—I grew up in Texas and I played college golf and Hogan sponsored us. So yeah, that’s who that is.

Mr. COHEN. I saw him when I was 10 years old here in Memphis. It was a great moment. He was a great golfer.

Mr. ROY. Yeah. A great, great story.

Mr. COHEN. Yeah. Thank you, Mr. Roy.

It’s now my pleasure to recognize the Chair of the Full Committee, the gentleman from New York, Mr. Nadler, who might have a picture of Y.A. Tittle somewhere.

Chair NADLER. Unfortunately, I don’t. Thank you, Mr. Chair, for convening this hearing.

Today’s hearing on voter suppression and continuing threats to democracy comes at a critical point in our history.

For the past several weeks the debate surrounding voting rights has been almost exclusively focused on Senate procedures. Yet, it is critical to remember that while the Senate negotiates changes to its procedures, States like Georgia, Texas, North Carolina, and Ohio continue their assault on democracy.

Legislation to protect the fundamental right to vote in fair elections free from racial discrimination faces united obstructions from Republicans in the Senate.

Ironically, they are so intent on blocking legislation to strengthen our democracy that they will not even permit the vote—the most basic democratic act, the majority vote.

This disregard for core small “D” democratic values no longer surprises many of us. Until relatively recently, both parties shared a commitment to supporting the Voting Rights Act.

As President Biden pointed out in his recent speech in Atlanta, the Senate voted 98 to nothing to reauthorize the Voting Rights Act in 2006, and the then-Chair of the Subcommittee, Steve Chabot, and I presided over thousands of—hundreds of hours of hearings to make the record.

Sixteen Republican Senators who voted to reauthorize the Act that year still serve in the Senate. Now, they stand firmly in opposition.

Here in the House, Mr. Chabot and I joined our former Chair, Jim Sensenbrenner, and Ranking Member John Conyers to lead efforts to pass this 2006 reauthorization overwhelmingly by a vote of 390 to 33. President George W. Bush signed it into law. Sadly, that seems like ancient history now.

As the threat to voting rights evolved for decades after the initial adoption, Congress continually updated and reauthorized the law
on a strong bipartisan basis in response to less racially overt but no less discriminatory threats to the right to vote.

For example, section 2 of the Act, which will be a primary focus of today's hearing, was amended on a bipartisan basis in 1982 to address attempts by States to dilute the strength of minority voting power through the redistricting process and the other changes to the methods of election on the Federal, State, and local level.

As we will hear from our Witnesses today, vote dilution efforts remain a critical threat to our democracy as certain States seek to co-opt the redistricting process. These States' attempts to dilute the strength of votes cast by minority voters are even more alarming in light of efforts by Republican State and local officials to manipulate the composition of local election boards or otherwise change laws related to the Administration of elections.

I must comment here on the remarks made by Mr. Roy, who said that many States have harmless laws. In Georgia, for instance, and in other States, precincts and drop boxes are deliberately being reduced in minority areas so as to produce long lines, and then they make it a criminal offense to offer a sandwich or a drink of water to someone waiting online.

Gerrymandering is justified as political rather than racial gerrymandering. Yet, we see as Chair Cohen noted, the racial motivations and the racial impact of these gerrymanderings.

The potential cumulative result of these various changes to voting procedures and district lines, if they remain in place, is a serious reduction in minority voting strength and a reduction in Black, Latino, and other minorities' representation and participation in government at every level.

An elected government that does not accurately reflect the participation of American voters, all American voters, regardless of race, is no true democracy.

In response to these efforts, Congress must do, once again, what it has done repeatedly on a bipartisan basis for decades since 1965—update and strengthen the Voting Rights Act to ensure that all Americans can continue to vote and participate in our democracy.

Yet, this time, we have been met with total obstruction. The problem is not one Senator from West Virginia. The problem is a political party—the Republican party—that has given in to cynicism and adopted the worst arguments of those who opposed the passage of the Act of 1965, all to gain some marginal political advantage.

Michael Carvin, representing the Arizona Republican Party in the Supreme Court, gave away the game when he boldly admitted this position in open court.

In response to a question from Justice Amy Coney Barrett about why his party had an interest in defending strict voting restrictions that were alleged to have violated section 2, he commented that eliminating them, "puts us at a competitive disadvantage relative to Democrats. Politics is a zero-sum game and every extra vote they get through an arguably unlawful interpretation of section 2 hurts us."

He wants to weaken voting rights because it will help him win. It's that simple.
If we are to remain a true democracy, we must resist attempts to poison our election machinery with partisan interests that disenfranchise minority voters, and we must stop attempts by States to deny or dilute the votes of Americans because of their ethnicity or skin color. Our Constitution and our values command no less.

I look forward to hearing from our Witnesses, and I yield back the balance of my time.

Mr. COHEN. Thank you, Mr. Chair. I will remind everybody that we’re taking votes now. So, if you’re not in DC at the Capitol, you might want to make sure you cast your proxy vote.

Now, it’s not my pleasure. Mr. Jordan is not going to give an opening statement. So, we’ll go to our Witnesses now.

We welcome our Witnesses on both panels and thank them for participating in today’s hearing. I will now introduce each of our Witnesses and after each introduction will recognize that Witness for his or her oral testimony.

Each of your written statements will be entered into the record in its entirety and I ask you to summarize your testimony in five minutes.

To help you stay within that five minutes there’s a timer in the Zoom view that should be visible on your screen. It’s not visible on my screen but, hopefully, it’s visible on your screen.

Before proceeding—and maybe it could be visible on my screen. How do we do this? I don’t know. More background filters—it’s too complex for me.

Before proceeding with testimony, I would like to remind all our Witnesses you have a legal obligation to provide truthful testimony in the answers to the Subcommittee. Any false statement may subject you to prosecution under section 1001, title 18, the United States Code.

Our first Witness is Mr. Wade Henderson. Mr. Henderson has been with this Committee as a Witness and has been a gentleman fighting for civil rights for my entire career in Congress and for many years before that. He’s a champion. He’s the interim President and CEO of the Leadership Conference for Civil and Human Rights, have previously led that organization for more than 20 years.

The Leadership Conference is a coalition of more than 200 civil and human rights organizations. He’s a graduate of Howard University and the Rutgers University School of Law.

Mr. Henderson, you are recognized for five minutes.

STATEMENT OF WADE HENDERSON

Mr. HENDERSON. Good morning, Chair Cohen, Ranking Member Roy, Full Committee Chair Nadler, and Members of the Subcommittee. Thank you for the opportunity to testify on the most pressing issue of our time, the freedom to vote.

This morning, we find ourselves in an extraordinary moment. Last night, the Senate delivered a devastating one-two punch to our democracy. First, the cloture motion to end debate which required a 60-vote majority failed to bring to a final vote the Freedom to Vote John R. Lewis Act. Then, an attempt at filibuster reform to ensure the eventual passage of the bill was defeated.
Now, every senator had a choice to make, whether to save our democracy or surrender it. In a deeply disappointing outcome, the Senate voted to surrender. Members surrendered our democracy to State and local legislatures across the country who would take us back to a world which we call Jim Crow 2.0, a world of exclusion, control, and inequality. Members surrendered to those who stoked their partisan base with vicious rage and incited violence against this very body and they surrendered it to those who wrongly challenged election outcomes and threatened election officials and their families.

If ever there were a moment in history that we needed our leaders to unite to preserve our most fundamental principle of participatory democracy, this was it. By leaders, I mean all Senators, from both parties. We not only called upon Democratic senators to defend our democracy, but we also called upon Republicans, too.

The Voting Rights Act has enjoyed strong bipartisan support since its enactment in 1965. This includes overwhelming votes in Congress for the reauthorizations that were signed into law by Republican presidents four times. Sixteen current Republican senators voted for the Voting Rights Act in 2006.

Yesterday, we made a final plea to Minority Leader McConnell to allow an up or down vote citing long standing Republican support and reminding him that it was Republicans, not Democrats, who passed the 14th and 15th Amendments to the U.S. Constitution. Last night, these Senators failed to meet the moment. Their refusal to allow the John Lewis bill even to come to a vote shows how far their party has fallen.

Yesterday was a devastating day for our democracy, but as Dr. King said, and I quote, “Change does not roll in on the wheels of inevitability but comes to continuous struggle.” I want to assure you that the struggle continues. The civil rights community is not backing down from this fight. Our elections, the officials who operate them, and the voters seeking to participate in them, are all under relentless attack. We are in this fight for them, and we will fight until we win. Now nearly nine years ago, the U.S. Supreme Court gutted the heart of the Voting Rights Act in Shelby County v. Holder. In its ruling, the Court invited Congress to update the formula for requiring certain States and jurisdictions to pre-clear voting changes to ensure they do not discriminate.

It was Members of the House Judiciary Committee who took up the Court’s invitation with resolve and tenacity. I want to thank the Committee for your leadership in developing the congressional record with evidence of voter discrimination and taking seriously your obligation to restore the Voting Rights Act.

The Leadership Conference supported those efforts by publishing 13 State reports that documented the pervasive, persistent, and adaptive nature of modern-day voting discrimination just as the Supreme Court instructed. We documented how the floodgates of discrimination opened on the very day of the Shelby County decision. Mere hours after the announcement, North Carolina passed its monster anti-voter law which was later struck down by the Fourth Circuit Court of Appeals for targeting African Americans with almost surgical precision. Texas was not far behind with its
own restrictive bill that a Federal court ruled was intentionally discriminatory.

We documented how this assault on democracy has only grown in momentum since the 2020 election. The big lie advocated by Donald Trump is fueling the actions of State lawmakers for using the absence of Federal voting protections to pass one restrictive voting law after another. A classic example is Arizona which last year drastically limited voting by mail, the voting method of choice for 80 percent of Arizonans. Combined with record-breaking changes or closures of polling places, Arizonans now have fewer opportunities to vote.

We are also seeing frightening attacks on election officials and poll workers, interference with impartial election Administration, and challenges to election results, and voter dilution to partisan gerrymandering. This coordinated, anti—

Mr. COHEN. Mr. Henderson, we need to wrap up.

Mr. HENDERSON. Thank you, sir. I will. We lost the battle last night. As our heroes did before us, we will fight on until victory is won because we have no other choice. Our democracy demands it and thank you for this opportunity.

[The statement of Mr. Henderson follows:]
Chairman Cohen, Ranking Member Johnson, and members of the subcommittee: Thank you for holding this important hearing today to highlight the ongoing crisis of discrimination against African Americans and other communities of color at the ballot box and throughout our political system. My name is Wade Henderson, and I am the interim president and CEO of The Leadership Conference on Civil and Human Rights, a coalition of more than 230 national organizations working to build an America as good as its ideals.

The Leadership Conference was founded in 1950 and has coordinated national advocacy efforts on behalf of every major civil rights law since 1957, including the Voting Rights Act of 1965 and subsequent reauthorizations. Much of our work today focuses on making sure that every voter has a voice in the key decisions that impact our lives, including pandemic relief, access to affordable health care, and policing accountability. At The Leadership Conference, we aim to ensure that every voter can safely and freely cast a ballot that counts.

Protecting our democracy has never been more important. We are now on the edge of a precipice. Too many people in positions of power around the country are trying to take us back to a world reminiscent of Jim Crow — a world of exclusion, control, and violent inequality. This assault on democracy has only grown in momentum since the 2020 election, with new and increasingly dangerous tactics that continue to undermine free and fair representation, including:

1. The “Big Lie” fabricated by Donald Trump is fueling the actions of state lawmakers who, since the U.S. Supreme Court’s Shelby County v. Holder ruling nearly nine years ago, have used the absence of federal voting protections to try to take us backwards by creating barriers to the ballot for Black, Brown, and Native voters; people with disabilities; young and older people; and new Americans.
2. Election subversion, which we saw with horrific clarity during the January 6 insurrection after elected leaders stoked their base’s rage so viciously that it led to an attempted coup d’état — and has now become a model for challenging election results.

3. Frightening attacks on election officials and poll workers, which threaten the operations and functioning of our election systems and intimidate the very people to whom we should extend our gratitude.

4. Lastly, the dilution of the people’s power through partisan gerrymandering. State legislators have pounced on 2020 Census data with a fury to undermine the voting power of communities of color, even in the face of dramatic increases in their representation. In state after state, we are seeing maps prepared and adopted which increase representation for white communities and dilute the voices of people of color.

The question is now: How must Congress meet this moment? And the unequivocal answer is that Congress must rise to this challenge and do everything within its power to move to debate and pass the Freedom to Vote: John R. Lewis Act by any means necessary. Let’s be clear: We have approached the time of dealing with the contradiction of what we say we are as a democratic republic, and what we actually are. In this perilous moment, Congress must carry out its duty and swiftly act to make real the promise of our democracy for all.

This week, our nation celebrated the birth of Dr. Martin Luther King, Jr. In his famous 1957 speech “Give Us the Ballot” delivered in Washington, D.C., he implored Congress to “provide a strong, moral, and courageous leadership for a situation that cannot permanently be evaded.” He called “the civil rights issue” an “eternal moral issue which may well determine the destiny of our nation... The hour is late. The clock of destiny is ticking out. We must act now, before it is too late.” Dr. King’s words ring true today.

As Dr. King’s speech makes clear, we have been here before. Throughout our nation’s history, we have faced seemingly insurmountable challenges to what should be our collective goals of ensuring democratic representation for all Americans. After Reconstruction, national voting rights legislation was considered by Congress. Henry Cabot Lodge, then a Massachusetts representative, sponsored a federal elections bill in 1890 to give the federal government responsibility for regulating elections to the House of Representatives. The bill was designed to enforce the ability of African Americans to vote in the South. It allowed constituents to petition a federal judge to take charge of a federal election, appoint supervisors to oversee federal elections, and send federal troops to monitor elections. In debate on the bill, Representative Lodge stated: “The first step toward the settlement of the Negro problem and toward the elevation and protection of the race is to take it out of national party politics.” The House of Representatives passed the bill with the support of Republican President Benjamin Harrison. But the Senate greeted the legislation with a week-long filibuster that ended in its defeat.

meet the moment. It was not until 1965, after John Lewis and hundreds of other civil rights marchers were brutally beaten on the Edmund Pettus Bridge in Selma, Alabama, that sweeping federal voting rights protections would finally become federal law.

This Senate cannot afford to fail in this moment. My testimony today will focus on the urgent and critical need for the Senate to come together to support passage of the Freedom to Vote: John R. Lewis Act. The Supreme Court’s evisceration of the Voting Rights Act in 2013 was the opening salvo in what has become an intensifying years-long campaign to destroy our democracy. Our elections systems, the officials who operate them, and the voters seeking to participate in them are being relentlessly attacked and undermined as never before in the modern era. If there ever was a moment in our history that we must unite to preserve our most fundamental principle of participatory democracy, that time is now.

The Voting Rights Act Has Always Enjoyed Strong Bipartisan Support

It was the 89th Congress that passed the Voting Rights Act in 1965 to outlaw racial discrimination in voting. The law had an immediate and profound impact, and it is widely regarded as the most consequential and successful civil rights law in history. Prior to 1965, many states barred Black voters from participating in the political system through literacy tests, poll taxes, voter intimidation, and violence. In Mississippi, for example, fewer than 5 percent of African Americans were registered to vote.²

Five years after the VRA’s enactment, almost as many African Americans registered to vote in Alabama, Mississippi, Georgia, Louisiana, North Carolina, and South Carolina as had registered in the century before 1965.³ The VRA became the nation’s most effective defense against racially discriminatory voting policies.

Section 5 of the VRA represents the heart of this seminal civil rights law. It recognized the importance of detecting and redressing voting discrimination before that discrimination can infect the electoral process and cause potentially irreversible harm to voters and to democracy itself. Section 5 applied to state and local jurisdictions with a history of discrimination and required them to preclear voting changes to ensure the change neither intentionally or adversely impacted voters on account of race, color, or membership in a language minority group. Section 5 was successful in enabling the federal government to block proposed voting restrictions and ensured that changes to voting rules were public, transparent, and evaluated to protect voters against discrimination.

The Voting Rights Act has commanded strong support from both political parties at every moment in time until now. In the decades after original passage of the VRA, Congress reauthorized Section 5 of the VRA on four separate occasions. Each time, the support from both Republican and Democratic parties was overwhelming. In 1982, for example, the Senate passed the bill by a vote of 85-8, and the House vote was 389-24. In 2006, when the VRA was last reauthorized, the Senate voted for reauthorization by a vote of 98-0 and the House voted for reauthorization by a vote of 390-33.

Each of the four reauthorizations of Section 5 of the VRA was signed into law by Republican presidents: President Richard Nixon in 1970; President Gerald Ford in 1975; President Ronald Reagan in 1982; and President George W. Bush in 2006. At the signing ceremony in 1982 attended by scores of civil rights leaders, President Reagan famously stated: "The right to vote is the crown jewel of American liberties, and we will not see its luster diminished. This legislation proves our unbending commitment to voting rights. It also proves that differences can be settled in good will and good faith."

Our democracy demands that same good will and good faith today. At a time when members of Congress should come together in the best interests of the people and the nation, they are instead tragically deepening a growing partisan divide. This is the moment when our leaders should unite and once again demonstrate our country’s steady and longstanding bipartisan commitment to voting rights. For example, 16 Republican senators currently serving in the Senate supported reauthorization of the VRA in 2006, either as senators or representatives. These senators include Minority Leader Mitch McConnell (R-KY), Ranking Member of the Senate Judiciary Committee Chuck Grassley (R-IA), and the former Chair of the Senate Judiciary Committee Lindsey Graham (R-SC). Other Republican senators withholding their support of our freedom to vote today include Marsha Blackburn (R-TN), Roy Blunt (R-MO), John Boozman (R-AR), Richard Burr (R-NC), Shelley Moore Capito (R-WV), Susan Collins (R-ME), John Cornyn (R-TX), Jim Inhofe (R-OK), Jerry Moran (R-KS), Lisa Murkowski (R-AK), Richard Shelby (R-AL), John Thune (R-SD), and Roger Wicker (R-MS). For reasons that can only be explained by raw partisanship, these 16 senators do not currently support the Freedom to Vote: John R. Lewis Act and refuse to allow the Senate to end debate on this legislation and take a final vote. That change in position — on the issue most fundamental to our democracy — is simply unconscionable.

“Current Conditions” of Voting Discrimination Require Congress to Respond Forcefully and Urgently

The refusal by the Senate to even debate prior versions of the voting rights bills is all the more devastating given the overwhelming record of voting discrimination before Congress. Members now have a full body of evidence that unequivocally supports Congress exercising its power under the Constitution and protecting our most fundamental freedom: the freedom to vote.

In Shelby County v. Holder, the Supreme Court eviscerated the most powerful provision of the VRA: the Section 5 preclearance system. In his ruling, Chief Justice John Roberts, on behalf of the majority, declared that “Our country has changed.” The Court held that the formula that decided which jurisdictions were subject to preclearance was outdated. But the Court also instructed Congress to assess current conditions relating to voting discrimination in order to lawfully require states and political jurisdictions to preclear voting changes. Through tens of hearings, hundreds of witnesses, and thousands of pages of testimony and exhibits, Congress has now done precisely that.

To help Congress develop the record to support the Freedom to Vote: John R. Lewis Act, The Leadership Conference published reports on the state of voting rights in 13 states across the country and introduced them into the congressional record. They document the “current conditions” surrounding voting discrimination — the same conditions required by the Supreme Court in Shelby County as the basis for
Congress to update a coverage formula — and highlight pervasive and persistent voting discrimination in its modern-day form. Overall, the reports demonstrate the importance of reinstating Section 5 preclearance to stop discriminatory voting changes from going into effect and thereby ensure that voters of color can fully participate in the political process and have their voices heard.

These reports document both the intentionality and speed with which states moved to disenfranchise voters of color after Shelby County lifted Section 5’s preclearance requirement. North Carolina presents a glaring example. In just a matter of hours after Shelby County was handed down, the North Carolina General Assembly announced that, because the decision had rid them of the “headache” of the Voting Rights Act’s preclearance protections, they could now move forward with the “full bill.” H.B. 589 became known as the “monster” voter suppression law — and was more restrictive than bills seen in any other state. Among other changes, the law eliminated same-day registration, pre-registration for 16- and 17-year-olds, out-of-precinct ballots, and the first week of early voting. It also instituted one of the nation’s most stringent voter ID requirements. More than three years after its passage, the U.S. Court of Appeals for the Fourth Circuit invalidated the omnibus suppression legislation, holding that the state of North Carolina illegally and intentionally targeted the right to vote of African Americans “with almost surgical precision” in violation of Section 2 of the VRA and the Fourteenth and Fifteenth Amendments.

The voting restrictions adopted as a result of the Shelby County decision came in all forms, shapes, and sizes with one common theme: a disparate impact on voters of color. For example, a report by The Leadership Conference Education Fund, “Democracy Diverted: Polling Place Closures and the Right to Vote,” found that after Shelby County, thousands of polling places were shuttered or moved in states previously covered by Section 5 under the VRA. In the 757 counties we analyzed that were once covered under Section 5, we found 1,688 polling place closures between 2012 and 2018. Texas closed more polling places than any other state, amounting to nearly half of the state’s total. Moreover, 590 of the 750 polling closures in Texas occurred prior to the 2016 presidential election — the first presidential election after Shelby County. Furthermore, five of the six largest county closers of polling places were in Texas. Unsurprisingly, these counties — Dallas, Travis, Harris, Brazoria, and Nueces — are all majority-minority jurisdictions with significant Latino and Black populations.

The voting discrimination unleashed by Shelby County has only grown in intensity with Donald Trump’s relentless lies about election outcomes, his attacks on the integrity of our elections, and the violent insurrection which he helped initiate to overthrow the 2020 presidential election results. In 2021 alone, state legislatures introduced 440 restrictive voting bills. Thirty-four laws were enacted in 19 states with anti-voter provisions that roll back early and mail voting, add new hurdles for voter registration, impose harsh voter identification requirements, strip power from state and local election officials to enhance

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6 McCrory at 204. Supra note 8 at 11.
8 Id.
9 Id.
voting access, and otherwise make voting more difficult, especially for people of color.\(^\text{10}\) These actions threaten the cornerstones of our democracy, and they show no signs of slowing down. At least 13 more restrictive voting bills are already prepared for new legislative sessions, and no fewer than 152 such bills will carry over from last year.\(^\text{11}\) The pattern is familiar. Demographic change and gains in participation in voting among communities of color are met with concerted efforts to impose new barriers in the path of those voters.

The state of Arizona presents a classic example. People of color now represent 45 percent of Arizona residents, and the state has seen a dangerous uptick in barriers to voting and election subversion measures that seek to dilute and discount the growing political power of Arizona’s communities of color. Arizona is one of the 19 states that passed restrictive voting bills last year. Two of the bills decreased opportunities to vote by mail in a state where 80 percent of voters rely on this method. First, it moved to undo the popular Permanent Early Voting List by purging voters from the early voting list for failure to vote in recent elections.\(^\text{12}\) Applying the “use it or lose it” principle to voting, this action disenfranchised thousands of Arizona voters generally and impacted voters of color in particular. Indeed, voters of color constituted the majority in seven of the eight legislative districts with the highest number of voters likely to be removed from early voting lists.\(^\text{13}\) The legislature also limited opportunities for voters to “cure” their ballots and address issues related to signatures with their ballots, further diminishing their ability to vote successfully by mail.\(^\text{14}\) This, too, disproportionately impacts voters of color, including Indigenous voters who often live in areas with fewer post offices, street addresses, and mailboxes.

These new measures to limit voting by mail place undue pressure on in-person polling locations. But polling places in Arizona’s largest county — Maricopa County — have been reduced in number by 70 percent since the Supreme Court’s ruling in *Shelby County v. Holder*.\(^\text{15}\) Statewide, Arizona closed 320 polling places between 2014 and 2018.\(^\text{16}\) Combined with newly imposed restrictions on mail-in-voting, these poll closures mean that Arizona voters face increasingly diminished opportunities to have their voices heard.

The disproportionate closure of polling places in communities of color continues today. As President Joe Biden and Vice President Kamala Harris visited Georgia to speak in support of federal voting rights legislation, voting rights advocates in Georgia were challenging poll closures in Lincoln County, a rural county where one quarter of the residents are Black.\(^\text{17}\) The plan by the elections board, newly reorganized

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11 Id.
13 Id.
14 Id.
16 Id.
pursuant to a Georgia state law, is to close all seven polling places and require voters to vote in one
centralized location. There is no public transportation, taxi service, or rideshare option in Lincoln County, and voters would have to drive or walk 15 miles to cast a ballot.

Congress Must Address Election Subversion to Safeguard Our Democracy

Importantly, the Freedom to Vote: John R. Lewis Act will help to prevent partisan election subversion. Efforts to interfere with impartial election administration and to discount and challenge election results represent an increasingly dangerous threat to democratic principles. Fueled by the “Big Lie,” Republican politicians are working hard at the state and local levels to install partisan actors in order to interfere with election processes or even reject election results entirely. They are using deliberate disinformation campaigns to introduce hundreds of election sabotage bills to control election outcomes, criminalize election officials for doing their jobs, and give partisan poll watchers the ability to harass and intimidate voters.18

Georgia’s new 98-page restrictive voting law represents an extremely alarming example. After Donald Trump notoriously told Georgia’s Republican Secretary of State Brad Raffensperger to “find 11,780 votes” to nullify Biden’s win, Raffensperger defended the election results. In this same sweeping anti-voter law that bans residents from providing food and water to voters waiting in polling place lines, Georgia Republicans removed Raffensperger from his position as chair and voting member of the state election board, which governs voting rules and election certification. The law now gives the Republican-led legislature the authority to appoint the chair.19 The reconstituted state board has the power to take over county election boards, which control polling places and voting hours, and install partisan administrators with the power to subvert results.20

Some state and local officials are also pushing for anti-voter election review scams that undermine democracy and divert crucial time and taxpayer dollars from the issues that matter most to voters. It was in Arizona that this dangerous and new form of democracy subversion first took hold. Republicans ordered a partisan, performative, and largely private post-election review of the 2020 election results — never mind that the election results had already been verified more closely than any other election in history. As a report commissioned by The Leadership Conference documenting Arizona’s pervasive pattern of racial discrimination in voting makes clear, this sham review was intended from the start to intimidate voters, serve as the basis for additional measures to restrict voting, and sabotage future elections.21

Like other insidious anti-voter measures that have been introduced in the wake of President Trump’s campaign to undermine the election, this sham review directly targets people of color and non-English speakers. That is by design. As the 2020 Census showed, Arizona remains one of the fastest-growing states in the country. Arizona has a long history of limiting or denying the right to vote to Black, Brown, and Native people. Though as recent data shows, despite pervasive barriers to voting, communities of color are strongly motivated to participate in the electoral process — and the voter participation gap is starting to close. These anti-voter reviews are blatant attempts to maintain systems of power and suppress the voices and votes of people of color who will soon be the majority.

The election review scam has been led by hyper-partisan actors, funded by special interest groups, and supported by conspiracy theorists. Beyond Arizona, they are happening in states like Pennsylvania and Wisconsin to upend democracy through three primary strategies: First, the reviews provide legislators pretext for pushing forward legislation that would further restrict access to the ballot box, particularly in communities of color. Second, right-wing lawmakers are using the sham reviews to boost political donations. Lawmakers pushing the conspiracies visited the sham ballot review headquarters in Phoenix as a campaign stop to spread misinformation and record fundraising videos. And third, politicians are weaponizing the anti-voter reviews to spread widespread distrust in our electoral system to manipulate results for their political and partisan gain.

Congress Must Protect Election Officials From Increasing Threats

Election workers must be able to do their jobs safely and free from fear or intimidation. The Freedom to Vote: John R Lewis Act would take significant steps toward bolstering election worker safety. Among other provisions, the bill prohibits firing of local election officials without cause, enhances rules for preservation of election-related records and equipment, and protects against poll observers harassing voters or interfering with elections.

Following the victory of President Biden and Vice President Harris, the same politicians who tried to create barriers to the ballot began spreading lies and conspiracy theories that ultimately fueled a deadly attack on the U.S. Capitol. But the violence did not stop there. The right-wing disinformation campaigns and thinly veiled calls for violence have led to a dangerous rise in threats against election workers and their families. In Arizona, where Secretary of State Katie Hobbs received death threats following the 2020 election.  

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22 Arizona’s population grew by 11.9 percent in the last 10 years, compared to 7.4 percent for the United States as a whole. Rice, Valorie. “Census 2020: Arizona Among Top-Growing States but Does Not Match Growth of Previous Decades.” Arizona’s Economy. April 27, 2021.

23 Latinos are Arizona’s largest minority group, making up approximately 30.7 percent of Arizona’s residents. Arizona’s African American and Native American communities, both at approximately 4 percent of the state’s population, are the next largest minority groups. The Asian American population in Arizona hovers at about 3.5 percent. Scharff, Spencer G; Caplan, Scott. “Current Conditions of Voting Rights Discrimination: Arizona.” The Leadership Conference on Civil and Human Rights. September 27, 2021.

24 Id.


election, the state Republican Party tweeted multiple incitements of violence, in one case sharing a clip from the movie Rambo with a message that read, “This is what we do, this is who we are. Live for nothing, or die for something.”

The tweet was later removed, though a spokesperson for the party said its removal was due to concerns about copyright — not concerns for the lives of election workers across the state.

Astonishingly, a survey commissioned by the Brennan Center for Justice found that one in three election officials feel unsafe because of their job, and nearly one in five listed threats to their lives as a job-related concern. Notably, 78 percent of election officials who were surveyed said that rampant disinformation on social media has made their jobs more difficult, and 54 percent said they believe that it has made their jobs more dangerous. The people making the threats are targeting election workers from front-line poll workers to vote counters to secretaries of state like Secretary Hobbs. An investigation by Reuters found more than 100 instances of threats made against election workers in eight battleground states following the 2020 election. The threats ranged from intimidation and harassment to threats of violence and death. Almost all of them were “inspired” by President Trump’s lies about the election.

Election workers and administrators are essential to a successful democracy. No election worker should have to live in fear. And yet, instead of taking immediate steps to quell the abuse, some right-wing politicians are continuing to stoke their base’s rage and even propose bills to criminalize election workers with fines up to $25,000 for minor mistakes. Growing concerns around the safety and integrity of the job could lead to an exodus of workers. This would have a disastrous ripple affect across our democratic processes, from long lines to poll closures to discouraged — and disenfranchised — voters. It is simply unacceptable that after showing up amid a pandemic to deliver democracy to the voters, election workers are now the target of vicious attacks — and attacks fueled by the very people who are charged to represent them.

Congress Must Address Discrimination in Redistricting

The Freedom to Vote: John R. Lewis Act would protect against discrimination in redistricting, ban partisan gerrymandering, and provide other protections in the redistricting process for communities of color and people who speak a primary language other than English. This is critically necessary. With the release of 2020 Census data, it is clear that partisan legislators everywhere are weaponizing the census to dilute the voting strength of communities of color.

31 Id.
Racial discrimination in the drawing of congressional and state legislative districts has long been an evil that the Voting Rights Act has been empowered to address. For example, after the 2010 Census, Black state legislators in Alabama filed a lawsuit alleging that the Republican-led legislature intentionally sought to dilute the Black vote by redrawing state legislative districts to pack Black voters into majority-Black districts, thereby reducing their influence in other districts. The Black legislators also claimed that the redistricting plan was an unconstitutional “racial gerrymander” that deliberately segregated voters into districts based on their race without adequate legal justification.33 The U.S. Supreme Court vacated a lower court decision rejecting the claims, concluding that the fact that the legislature “expressly adopted and applied a policy of prioritizing mechanical racial targets above all other districting criteria (save one-person, one-vote) provides evidence that race motivated the drawing of particular lines in multiple districts in the State.”34 On remand, one of the Eleventh Circuit’s most conservative judges, William Pryor, authored an opinion for the three-judge court, ruling that 12 of the majority-minority districts were unconstitutional because the legislature relied too heavily on race in drawing their boundaries.35

Today’s state legislatures are drawing and adopting brazenly partisan and discriminatory plans to accomplish political gain at the expense of voters of color. For example, although 95 percent of the growth in Texas’ population in the past decade was attributable to people of color, the Texas legislature redrew federal and state legislative districts to increase the influence of White voters and diminished the voting strength of communities of color, in some cases intentionally. The plans are subject to multiple lawsuits, including by the Department of Justice.

Meanwhile, the Georgia legislature dramatically transformed the district of Representative Lucy McBath, a Black woman, to add the Appalachian foothills to her suburban Atlanta district, transforming her district from one that favored President Biden by 11 points to one that Trump would have won by 15 points.36 And in North Carolina, the state legislature so radically transformed the district of Representative G.K. Butterfield that he decided not to run for Congress again. A former voting rights lawyer and justice on the North Carolina Supreme Court, Representative Butterfield argued that the new lines do not only grant Republicans an unfair political advantage, but they also prevent voters of color from electing their preferred candidates: “It is what we call retrogression. The district is retrogressed from 42 percent, African American to 38 percent. That violates the Voting Rights Act.”37

The Time Is Now to Pass the Freedom to Vote: John R. Lewis Act

For democracy to work for us all, it must include us all. When certain communities cannot access the ballot and when they are not represented in the ranks of power, our democracy is in peril. The coordinated, anti-democratic campaign to restrict the vote targets the heart of the nation’s promise: that every voice and every eligible vote count.

Congress has a moral and constitutional imperative to meet the urgency of this moment and pass the Freedom to Vote: John R. Lewis Act. This bill will restore essential provisions of the Voting Rights Act that block discriminatory voting practices before they go into effect, putting a transparent process in place for protecting the right to vote. It will also strengthen other provisions of the VRA to eliminate barriers imposed to silence Black, Brown, and Native voters; people with disabilities; young and older people; and new Americans. It will also create national standards to improve voting access for all eligible Americans. It would modernize voter registration, expand early and mail-in voting, and secure other baseline reforms to make it easier for everyone, including voters of color, to cast a ballot successfully.

On March 7, 1965, just a few months before Congress would pass the Voting Rights Act, then 25-year-old John Lewis led more than 600 people across the Edmund Pettus Bridge to demand equal voting rights. State troopers unleashed brutal violence against the marchers, and Lewis himself was beaten and bloodied. Upon completion of the Selma to Montgomery march later that month, Dr. King addressed the crowd and said, “We are on the move and no wave of racism can stop us… Let us therefore continue our triumphant march to the realization of the American dream… I know you are asking today, ‘How long will it take?’ Not long.”

Both Congressman Lewis and Dr. King never gave up the fight for equality and for full representation of all Americans in our political system. Before his death, Congressman Lewis wrote: “Time is of the essence to preserve the integrity and promises of our democracy.”38 Members of Congress must now heed his call with all the force they can muster.

Thank you for inviting me to testify today. I am pleased to answer any questions you may have, and I look forward to working with you to ensure all of us, no matter race or place, have an equal say in our democracy.

Mr. COHEN. Thank you, Mr. Henderson. I can't help but continue to think about [inaudible] a time when Charlie Sifford wasn't even allowed to play on the tour and of course, Charlie Sifford was relegated to back seat tournaments until he won the Hartford Open in what was referred to as the Wingnuttery State of Connecticut in 1967. Great man, Charlie Sifford.

I would like to recognize our next Witness, Ms. Sherrilyn Ifill. Ms. Ifill is the President and Director—Counsel of the NAACP Legal Defense and Education Fund, a position she has held since 2013. In that role, she has led the LDF and increased its visibility and engagement, litigating cutting edge and urgent civil rights issues, and elevating the organization’s decades-long leadership fighting voter suppression, inequity in education, and racial discrimination in the criminal justice system.

She first joined the Legal Defense Fund in 1988, and litigated voting rights cases for five years before leaving to teach constitutional law and civil procedure for the next 20 years at the University of Maryland School of Law. She received her J.D. from New York University School of Law and undergraduate degree from Vassar.

Ms. Ifill, you are recognized for five minutes and thank you.

STATEMENT OF SHERRILYN IFILL

Ms. IFILL. Good morning, Chair Cohen, Vice Chair Ross, Ranking Member Johnson, and Members of the Subcommittee. My name is Sherrilyn Ifill, and I am the President and Director-Counsel of the NAACP Legal Defense and Educational Fund or LDF.

I have had the honor of appearing before this Committee in the past to talk about the need for voting legislation to protect the rights of all Americans, especially for racial minorities, but I have never felt the sense of urgency or alarm as I feel appearing before you today.

Last night, the U.S. Senate failed to find a will to push past an arcane rule with racist roots. This increases my alarm, but also my resolve.

This country is in a State of democratic crisis. This very moment, States are drafting, passing, and implementing laws designed to create insurmountable barriers to voting. Those barriers are targeted principally at Black and Latino voters, Native American voters, disabled voters, and students. They include laws designed to restrict early voting, absentee voting, and the use of ballot drop boxes. They add the insult of making it a crime to provide water or refreshments to the injury of those who have to wait up to nine hours to exercise the right that the Supreme Court has said is preservative of all rights, the right to vote.

Laws have passed that are being considered that would leave Black and Latino voters vulnerable to the kind of intimidation reminiscent of the worst days of the civil rights struggle and that we saw on the rise in the 2020 election. Just this week, the Governor of Florida announced a plan to create an election police force answerable to him.

Even more alarmingly, States have passed laws that give partisan legislators control over the outcome of elections no matter the votes cast. Election officials from Secretary of the State to vote
counters have experienced the sharp rise in threats to their lives and to their families. Scores of expert nonpartisan election officials have resigned from office rather than continue exposing their families to danger. This would be catastrophic for elections.

Since last spring, LDF has seen Florida, Georgia, and Texas reverse voter suppression laws targeted at our communities. These lawsuits have survived multiple attempts to prevent our clients from seeing their day in court showing the seriousness of our claims and we are suing Alabama and South Carolina for drawing congressional districts for State legislative maps that undercut Black voters’ chance to elect candidates who will speak to their urgent concerns in the halls of power.

Alabama’s congressional map is akin to one person half a vote for that State’s long suffering Black community. We cannot litigate our way past this threat. Others like Black Voters Matter, the NAACP, the League of Women Voters, are organizing, mobilizing, and registering voters on the ground, but we cannot organize our way past this threat.

In the past, it was Congress through the Voting Rights Act that ensured we had strong tools. Then the Supreme Court weakened those tools first in the Shelby County v. Holder case and then just this past summer in the Brnovich case. This is why Congress must act.

Do not be fooled by those who call voting legislation a Federal takeover of State elections. That is what Southern segregation has said about mandatory school desegregation as part of massive resistance. Tell them that their problem is not with the Congress or with the Democrats, but with the Constitution itself. Tell them that article 1, section 4 of the Constitution gives Congress the power to make laws that control the time, place, and manner of Federal elections. Tell them that section 5 of the 14th Amendment and section 2 of the 15th Amendment expressly empower Congress to enforce the guarantees of equality in voting. You have the authority and responsibility, and that constitutional power must outweigh allegiance to any congressional rule, particularly a rule that has been most often used to thwart civil rights.

There is no more time to wait. Early voting for the Texas primary starts in just 25 days and Black and Brown voters will be heading to the polls with a shredded shield facing new restrictive laws without desperately needed Federal protection. Added to this, we are more than halfway through the first redistricting process in six decades without the full protections of the Voting Rights Act. States like Texas and Alabama have seen population growth driven almost entirely by people of color that have already drawn maps that failed to increase representation for those people or even set it back and not just at the congressional, but judicial districting, school board districting, and county commissions. One expert’s blunt assessment of this redistricting cycle, people of color are getting shellacked.

Black and Brown Americans face the greatest assault on our voting rights in decades. Only Congress can help now by passing the Freedom to Vote John R. Lewis Voting Rights Act. As civil rights groups, we will not stop pushing for passage of the legislation.
Historians seeking to explain the next century of American life will look back at this very moment and ask the question did we Act when we had the chance or did we squander our last best hope to protect the freedom to vote and save our democracy.

Thank you, Mr. Chair, for the opportunity to be here.

[The statement of Ms. Ifill follows:]
Written Testimony of Sherrilyn Ifill  
President and Director-Counsel  
NAACP Legal Defense and Educational Fund, Inc.

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

In connection with its January 20, 2022 hearing entitled  

“Voter Suppression and Continuing Threats to Democracy”
I. INTRODUCTION

Good morning, Chairman Cohen, Vice Chairwoman Ross, Ranking Member Johnson, and members of the Subcommittee. My name is Sherrilyn Ifill, and I am President and Director-Counsel of the NAACP Legal Defense and Educational Fund, Inc. (“LDF”). Thank you for the opportunity to testify this morning on the present crisis for voting rights and our democracy, and the urgency of enacting federal legislation which fully restores the Voting Rights Act of 1965, sets minimum standards for access to the ballot, protects election workers, and combats the subversion of free and fair elections.

A. The Fierce Urgency of This Moment

This Subcommittee meets today at a historic moment when it is not hyperbole to say that the fate of American democracy hangs in the balance. Black and brown Americans face the greatest assault on our voting rights since the Jim Crow Black Codes rolled back the progress made during Reconstruction. And the threat of our democracy breaking apart at the seams and sliding irreversibly into authoritarianism—ceasing to exist as everyone alive today has known it—has not been as acute since the Civil War.

Earlier this week, the nation celebrated the life and legacy of Dr. Martin Luther King, Jr. Dr. King, of course, fought vociferously for the right to vote, and said in 1957: “Give us the ballot and we will no longer have to worry the federal government about our basic rights.” 1 He also famously spoke of the “fierce urgency of now” and the prescient notion that in “this unfolding conundrum of life and history, there is such a thing as being too late.” 2

The urgency of this moment could not be fiercer. Exactly one week ago, the U.S. House again fulfilled its constitutional responsibility by passing the Freedom to Vote: John R. Lewis Act to safeguard voting rights and directly address the clear and present danger of targeted vote suppression. 3 Despite clarion calls to action by millions and the outspoken condemnation of anti-voter laws by grassroots activists

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in Black and brown communities, voting rights advocates, nonpartisan election law experts, influential Black executives in corporate America, corporations such as Coca Cola and Delta Airlines, sports associations like Major League Baseball, film industry icons, religious leaders, and more, the U.S. Senate has not found the will to push past an obscure rule with a racist history to act in concert with the House.

Last week President Biden spoke in Georgia—where my organization is in litigation and local leaders are on the front lines of this fight—and put our present challenge in stark but appropriate terms. Consequential moments of history, he said, present a choice: "Do you want to be on the side of Dr. King or George Wallace? Do you want to be on the side of John Lewis or Bull Connor? Do you want to be on the side of Abraham Lincoln or Jefferson Davis?" We must not squander this historic moment. The nation must stay laser focused on the battle to protect voting rights and save our democracy in the coming weeks, and every single U.S. senator must be forced

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to confront this choice as many times as necessary to move this nation forward onto
the right side of history.

B. The Purpose of My Testimony

My purpose today is to make plain the depth of the crisis we face, the urgency
of addressing it, and fact that Congress has the clear tools and responsibility to do so.
To complement LDF’s previous testimony in support of the John Lewis Voting Rights
Advancement Act, I will focus on four key topics.

First, the January 6th Insurrection was an avatar of a growing white
supremacist backlash against the rising power of voters of color that mirrors the Jim
Crow backlash against Reconstruction in the South, and finds clear expression in the
questioning of the 2020 vote count in communities of color, the hundreds of restrictive
voting laws introduced in nearly every state in 2021, and the vicious harassment of
election workers we’ve seen over the past year. Second, this threat has only grown in
the face of congressional inaction and is ongoing and acute right now. It is
compounded by the fact that we are experiencing the first decennial redistricting
process in six decades without the full protections of the Voting Rights Act, and states
and localities across the country have already moved aggressively to weaken the
voices of Black and brown voters. Third, LDF and our partner organizations are
litigating aggressively to protect Black and brown voters, but we cannot secure such
protection alone. Finally, the only way to ensure American democracy endures is for
Congress to act immediately to fulfill its constitutional duty to protect the right to
vote.

C. LDF’s Voting Rights Legacy and Current Work

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.

\[11\] LDF Staff have testified before the Senate Judiciary Committee (4/20/21 & 7/14/21); the House
Committee on Administration (6/24/21); and the House Judiciary Committee (8/16/21).
\[14\] LDF has been an entirely separate organization from the NAACP since 1957.
Beginning with *Smith v. Allwright*, 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*, 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* 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 U.S. Constitution. LDF has prioritized its work protecting the right of Black citizens to vote for more than 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 across the South to strengthen and protect the ability of Black citizens to participate in a political process free from discrimination.

Despite the guarantees of the 14th and 15th Amendments, the Voting Rights Act of 1965 ("VRA"), and other federal voting rights statutes, racial discrimination and targeted suppression of the rights of Black voters persist, and the need for litigation by LDF and other civil rights organizations has not abated. Indeed, in the years since the infamous 2013 Supreme Court decision in *Shelby County, Alabama, v. Holder*, methods of voter suppression have metastasized across the country. LDF helped to litigate the *Shelby* case, including presenting argument in the Supreme Court in defense of the constitutionality of Section 5 of the Voting Rights Act and importance of pre-clearance to the protection of voting rights. The Supreme Court’s decision in *Shelby*, disabling this key provision, has had a devastating effect on the voting rights of racial, ethnic, and language minorities in this country.

As part of our voting rights work, LDF has monitored elections for more than a decade through our Prepared to Vote initiative ("PTV") and, more recently, through our Voting Rights Defender ("VRD") project. Our PTV and VRD initiatives place 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. Prior to

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Election Day, PTV equips voters with non-partisan educational materials, answers questions about how to register to vote and what identification is needed on Election Day, and provides information on local voting laws and practices that may affect voters during the election process. 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.

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 voters 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.

In addition, in anticipation of the current redistricting cycle, LDF built a team of attorneys, trainers, policy advocates, and organizers to educate communities about what’s at stake and how to engage in the process, push lawmakers to draw fair lines, and sue states and localities that proceed with maps that dilute Black voters’ voices.

II. FROM HISTORIC TURNOUT TO VIOLENT & SUSTAINED BACKLASH

Black Americans are facing an unmitigated assault on our voting rights, and an unprecedented attack on our democracy, fueled by a White supremacist backlash against an historic election in which voters of color made our voices heard and made a decisive difference across the nation.

A. The 2020 Election Makes History

The 2020 election was not beset with large-scale fraud, as claimed by some. It also did not, as numerous news reports suggested, “go smoothly,” Accounts from LDF’s Voting Rights Defender and Prepared to Vote teams, detailed in the LDF Thurgood Marshall Institute’s latest Democracy Defended report, reveal the depth and breadth of the issues voters faced. From vote-by-mail restrictions that are unnecessary at any time and particularly absurd during COVID to voter intimidation.

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to poll closures and long lines, Black voters faced a litany of barriers to the ballot. And the arc of voter suppression extended beyond Election Day in an unprecedented campaign to disrupt the counting and certification of ballots and overturn the election’s results. 21

Yet, the 2020 election was historic. Voters overcame a host of obstacles with determination and resilience. Two-thirds of eligible voters participated in 2020, which is the highest turnout rate recorded since 1900 but actually the highest turnout ever given the significant expansion of both the population and who is eligible to vote since the turn of the twentieth century. 22 Black voter turnout was greater than 65% and nearly matched records set when President Obama was on the ballot. 23

This historic election culminated on January 5, 2021 with Georgia’s runoff election. Turnout in runoff elections, which occur after Election Day, is typically modest, and at times anemic. But, with control of the U.S. Senate at stake, and the opportunity to elect candidates who reflected the growing diversity of the state, a record 60% of Georgians turned out in the January runoff. 24 The 4.4 million Georgians who cast ballots on January 5 th was more than double the number who voted in the previous record turnout runoff election in 2008. 25 Black voters drove this historic participation, with Black turnout dropping just 8% from the general election

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25 Id.
compared with an 11% decline among White voters. The result was the election of the first Black and Jewish senators in Georgia history.

This historic turnout was no accident, and was not driven by the stakes alone. Civil rights and liberties groups and Black-led grassroots organizations in Georgia had spent years challenging attempts to restrict access to the ballot and building substantial voter outreach campaigns to educate voters regarding the stakes of federal, state, and local elections and assist communities as they navigate the voting process.

The Herculean effort it took to help Black and brown voters overcome barriers to the ballot in the 2020 election is not constitutional or sustainable. The backlash to the results, however, was immediate.

B. The January 6th Backlash

American history has arguably been a halting journey towards political equality. Eight of the 17 post-Bill of Rights amendments to the U.S. Constitution have expanded the franchise directly or who is included in “we the people” more broadly. This journey, however, has never been a straight line; progress is often followed by backlash and retrenchment.

The progress of Reconstruction was followed by nearly a century of Jim Crow “Black Codes” in the South. The progress of LDF’s landmark Brown v. Board of Education case was followed by “massive resistance” and segregation academies.

Throughout the South, communities chose to shutter public infrastructure rather than share it equally—literally drain public pools rather than let Black and White children swim together. More recently, robust public demonstrations of anguish and anger over George Floyd’s murder and countless examples of police devaluing Black lives have produced modest criminal justice reforms and facilitated an important


27 Steve Peoples, Bill Barrow, and Russ Bynum, “Warnock, Ossoff win in Georgia, handing Dems control of Senate,” ASSOCIATED PRESS (Jan. 6, 2021), https://apnews.com/article/Georgia-election-results-482f5b7eece3d433e98a1dabe2c6f5


29 U.S. CONST. amends. XIII, XIV, XV, XVII, XIX, XXIII, XXIV, XXVI.


national conversation about structural racism, but have also lead to a sharp backlash in the form of White-led state legislatures and school boards passing so-called “anti-critical race theory” measures that mandate a false, sanitized version of American history.  

a. The Racist Roots

The backlash to historic 2020 voter turnout among people of color has been swift and severe—a new chapter of an old story. Immediately after the election a campaign asserting that the 2020 election was stolen through rampant fraud began and those participating in that effort sought to disrupt the counting and certification of the presidential election and to ultimately to overturn its results. That campaign was orchestrated by extremist factions incited at least in part by former President Trump. The sharp racial divide between those promoting the stories of rampant fraud and those who accept the results of the 2020 election is no coincidence, as assertion itself is steeped in racism.

Who exactly was assumed too incompetent to run a clean election or crime-prone and disloyal enough to intentionally manipulate the system? It was Black elections officials and voters in Black population centers such as Detroit (where election officials counting votes were mobbed and harassed), Philadelphia (where the FBI helped local police arrest two men with weapons suspected of a plot to interfere with ballot counting), or the Atlanta metro region (where it was alleged that hundreds of thousands of ballots mysteriously appeared). Or, Latinos in places like Arizona where robust turnout among the Latino population was decisive and

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34 Belief in the Big Lie narrative is sharply divided by partisanship, which is highly correlated with race. See Joel Rose & Liz Baker, “6 in 10 Americans say U.S. democracy is in crisis as ‘Big Lie’ takes route,” NPR (Jan. 3, 2022), https://www.npr.org/2022/01/03/1069764164/american-democracy-poll-jan-6. In addition, “Republicans most likely to believe that racism and discrimination are not a problem are also the most devout believers in the Steal the Steal narrative.” Lee Drutman, “Theft Perception,” VOTER STUDY GROUP (June 2021), https://www.votestudygroup.org/publication/theft-perception.  
35 Bostock, supra note 21.  
36 Ewing et al., supra note 21.  
protestors attempted to infiltrate ballot counting headquarters and tamper with vote counting.\textsuperscript{38}

\begin{itemize}
\item[b.] \textbf{The Insurrection}
\end{itemize}

After challenging election results in communities of color, the next step in the backlash was the January 6\textsuperscript{th} Insurrection—just one day after Black voters asserted their power in Georgia. The violent attack on the Capitol on January 6\textsuperscript{th} was a brazen, virulent, and deadly manifestation of the concerted effort to undermine our democracy, to overthrow the government, and to negate the votes cast by our communities. The information unveiled through the House Select Committee’s and Department of Justice’s ongoing investigations confirms that the violence was not a spontaneous reaction by a worked-up crowd, but rather a planned coup attempt abetted by encouragement or deliberate inaction at the highest levels.\textsuperscript{39}

This attempt to thwart the peaceful transfer of power—the very hallmark of a functioning democracy—was the natural conclusion of years of rhetoric inciting and condoning racism and white supremacy,\textsuperscript{40} expanding the proliferation of conspiracy theories,\textsuperscript{41} and flouting the rule of law. As the political scientist Hakeem Jefferson and the sociologist Victor Ray have written, "Jan. 6 was a racial reckoning. It was a reckoning against the promise of a multiracial democracy and the perceived influence of the Black vote."\textsuperscript{42} We know this in part because “those who participated in the insurrection were more likely to come from areas that experienced more significant declines in the non-Hispanic white population — further evidence that the storming of the Capitol was, in part, a backlash to a perceived loss of status, what social scientists call ‘perceived status threat.’”\textsuperscript{43}

Many photographs from the January 6\textsuperscript{th} insurrection were disturbing, but one in particular encapsulated the event’s

\begin{itemize}
\item[38] Lahut, supra note 21.
\item[43] Id.
\end{itemize}
historical significance and the stakes for our Republic: the image of an insurgent inside the U.S. Capitol brandishing a Confederate flag.44

c. The Backlash Continues as State Legislatures Block Access to the Ballot

The next stage of the backlash played out in state legislatures across the country through bills and laws intended to block Black and brown Americans’ access to the ballot. In 2021 we saw a repeat of history—a steady drip of old poison in new bottles. Whereas in a bygone era discriminatory intent in voting restrictions was dressed up in ideals such as securing a more informed and invested electorate, the new justification is fighting imaginary voter fraud, a phantom conjured only to attack. Fueled by the false assertions of voter fraud and a stolen election, lawmakers sought to ensure that 2020’s robust turnout among voters of color could not be repeated. Legislators introduced more than 400 bills in nearly every state aiming to restrict the franchise.45 Nineteen states enacted a total of 37 laws that roll back voting rights and erect new barriers to the ballot.46

Justice Ginsburg, in her Shelby dissent, compared efforts to combat voter suppression in the states to “battling the Hydra.”47 According to Greek mythology, for every head cut off the monstrous Hydra, two more would grow in its place.48 The preclearance provision of the Voting Rights Act was designed to address the Hydra problem—to eliminate adaptive, and unrelenting discriminatory voting practices. Yet, Hydra-like proliferation is exactly what we see unfolding in the states.

Critically, many of these laws are directly targeted at cutting off pathways to the ballot box that Black and brown voters used successfully in 2020. For example, after Black voters adjusted to the pandemic by voting absentee, S.B. 90 in Florida severely curtailed the use of unstaffed ballot return drop boxes and effectively eliminated community ballot collection.49 And in Georgia and Texas, after strong early in-person turnout among Black voters, lawmakers initially moved to outlaw or

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46 Id.
47 Shelby County, 570 U.S. at 590 (Ginsburg, J., dissenting).
48 Hydra: Greek Mythology, BRITANNICA.COM (last accessed May 24, 2021).
limit Sunday voting in a direct attack on the “souls to the polls” turnout efforts undertaken by many Black churches. The final law in Georgia hampers vote-by-mail, cuts back on early voting, and more. And the new omnibus voting law in Texas, S.B. 1, eliminates a number of accessible, common sense voting methods, including “drive-thru” voting and 24-hour early voting—both methods that proved invaluable for Black and Latino voters in Texas’s largest cities in 2020.

The people targeted by these laws are well aware of what is happening, and are actively fighting back. Jeffrey Clemmons, a Black resident of Harris County Texas in his early twenties who was a leader in his college NAACP chapter and served as an election judge in 2020, is suing to push back on the Texas 2021 voter suppression law, represented by LDF. Mr. Clemmons says:

I absolutely think that the over 400 laws that were pushed through legislatures from Texas to Georgia to curtail our rights to vote were indeed because of the incredible turnout of people of color and young people again who had never turned up to the ballot box before. We felt so motivated and so strongly about this election because we knew [what] was on the line if we didn’t vote in so many instances and because we are tired of not being represented properly... And so these election laws are an attempt to turn back the clock on our voting rights and make sure that [we] never happens again to create, you know, this environment of fear that if you vote, you’re going to be punished for it.


54 Interview by Adam Lioz, Senior Policy Counsel for LDF, with Jeffrey Clemmons (Jan. 10, 2022) (on file with author).
d. Backlash Beyond Election Day: Subverting Election Results

The 2020 election and 2021 runoff taught entrenched interests that even in the face of formidable obstacles and deliberate barriers, Black and brown voters can at times break through to make their voices heard, so they need a backup plan. To advance this backup plan, thus there is currently an effort to extend the arc of voter suppression beyond Election Day to facilitate the sabotage and subversion of election results. The primary approach is to replace nonpartisan, good-faith election workers with those who will adhere to a particular outcome.

In 2021, 32 laws were enacted in 17 states which allow state legislatures to politicize, criminalize, or otherwise interfere with elections. These include measures to shift authority over elections from executive agencies or nonpartisan bodies to the legislature; roll back local authority through centralization and micromanagement; and criminalize good-faith mistakes or decisions by elections officials.

These new rules allow White-dominated legislatures or statewide bodies to assert control over majority Black local jurisdictions. In Georgia, for example, another provision of S.B. 202—the law that LDF is challenging in court—allowed the State Election Board to assume control of county boards. Through this bill and separate legislation to reorganize county election boards, several black election board members or supervisors have been replaced with White conservatives. For example, H.B. 162 reconstituted the Morgan County Board of Elections, giving control over all appointments to the Board of County Commissioners, and leading directly to the removal of Helen Butler and Avery Jackson, two Black members Board members. Ms. Butler had served on the board for more than a decade without any allegations of wrongdoing and neglect, using her position to advocate for more accessible elections.

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56 Id.
58 Id.
59 Id.
61 Id.
Criminalization provisions expose good-faith election officials to unreasonable risk for doing their jobs. For example, Texas’ S.B.1, which LDF is challenging, contains a provision that exposes election judges who take action to prevent poll watchers from harassing voters to possible criminal sanctions. This despite the fact that the Texas Election Code contains specific provisions designed to protect voters from exactly such interference—and it is the election judge’s responsibility to enforce these provisions at a given polling location. The new law thus puts good-faith election judges in a no-win situation where they can incur criminal penalties for fulfilling their duties.

Beyond legal changes, extremists have subjected elections officials to death threats and other forms of harassment on an ongoing basis. A November 2021 Reuters Special Report documented nearly 800 threats to election workers over the previous year, including more than 100 that could warrant prosecution. Women serving as Secretaries of State in battleground states have been singled out for particularly nasty treatment. In June, an Arizona man called Secretary of State Katie Hobbs’ office and left a messaging saying she would hang “from a f----- tree...They’re going to hang you for treason, you f----- b----.” In August 2021, a Utah man who had been listening to a Mesa County, Colorado election clerk criticize Secretary of State Jena Griswold sent Secretary Griswold a Facebook message: “You raided an office. You broke the law. STOP USING YOUR TACTICS. STOP NOW. Watch your back. I KNOW WHERE YOU SLEEP, I SEE YOU SLEEPING. BE AFRAID, BE VERRY AFRAID. I hope you die.”

According to an April 2021 survey, approximately one-third of election officials are concerned about feeling unsafe on the job, being harassed on the job, and / or facing pressure to certify election results. Nearly one-third have already felt unsafe and almost 20% have been threatened on the job. This is driving a wave of retirements, leading the director of the Center for Election Innovation and Research

64 Id.
65 Id.
67 Id. at 7.
to tell the New York Times, “We may lose a generation of professionalism and expertise in election administration. It’s hard to measure the impact.”

This concern is almost certainly more acute for Black election officials and other election officials of color. Texas election judge and LDF client Jeffrey Clemmons, a Black man in his early twenties, says that if he works as an election worker again in the future:

I am almost certain that I am going to face probably more harassment than I did the last time around because of the heightened political environment that we’re in, where people feel again as if their elections are being stolen, that you know, democracy is being undermined left and right, which it is, but of course not in the way that they think that it is. And so you’re going to have people who are signing up to be poll watchers for probably partisan campaigns and coming into polling places and attempting to identify election fraud as it were through the Texas election bills...I can only imagine things I’m going to face, whether it’s someone, you know, yelling belligerently at me or taking video of me when I’m just doing my job or potentially having the cops called on me because of the color of my skin and the fact that I’m working an election.

The combination of removing non-partisan or bipartisan election officials, exposing good-faith election workers to criminal penalties, and a constant stream of threats and harassment contributes to perhaps the most dangerous strategy for subverting election results: thousands of election officials with experience and integrity are being replaced by individuals who are on a mission to achieve a particular election outcome, regardless of whether that outcome aligns with the votes cast by the electorate.

III. DEMOCRACY IN PERIL: THE PRESENT THREAT

The backlash to 2020 and lack of federal response has brought us to a fraught moment in 2022. The accumulation of aggressive gerrymandering, critical midterm elections approaching without federal protections, additional state laws making it harder to vote and easier to subvert the will of the people, and constant threats to poll workers marks a clear and present danger for our democracy.

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69 Interview with Jeffrey Clemmons, supra note 54.
A. Drawing Political Maps Under a Weakened Voting Rights Act Can Lead to a Decade of Diluted Voices

The political maps legislatures and local jurisdictions are drawing right now will shape the landscape of political possibility through 2031. As we meet today, with more than 30 states having completed their legislative maps, we are now more than halfway through the first redistricting process in six decades without the full protections of the Voting Rights Act, and our democracy is being severely weakened.\(^70\)

a. District Lines Shape Political Voice

Drawing political lines is perhaps the single most powerful way to strengthen or dilute the political voice of any person or cohesive group. Until the landmark “one person, one vote” cases of the 1960s, rural landowners enjoyed sharply more political influence than urban residents because district lines routinely valued territory or political boundaries over basic political equality.\(^71\) And throughout American history, entrenched incumbents have proven adept at manipulating district boundaries to protect their own election prospects, their political parties’ power, and—most starkly—undermine the voice and power of Black and brown residents in their states and communities.

To prevent Black voters from attaining fair representation, mapmakers often “pack” Black voters into as few districts as possible so that a Black population of 35%, for example, can elect one candidate of choice by a wide margin rather than three or four. At the same time, they will often “crack” Black populations into several districts so that Black voters cannot make a meaningful difference in any of them.

From 1970—just after the “reapportionment revolution” forced line-drawers to adhere to the one-person, one-vote principal—through the 2010 redistricting cycle, the preclearance protection of Section 5 of the Voting Rights Act was a powerful tool to protect Black and brown voters through the districting process. Section 5 certainly did not ensure that Black voters enjoyed fully equal representation throughout the country, but its anti-retrogression principle did mean that at least hostile state legislatures could not set Black voters further back after each Census.\(^72\) Section 2 of the Voting Rights Act has been a complementary tool, allowing Black and brown


voters and community organizations to bring lawsuits when district maps disempowered them compared with neighboring White communities.

The Supreme Court, however, substantially weakened these protections in the 2013 Shelby case when it undercut the preclearance protections of Section 5 and in 2021 when the Court made Section 2 claims more challenging in Brnovich v. DNC.73 The result is that Black communities have entered the current redistricting cycle with a shredded shield, more exposed to the manipulations of designed to weaken their political power.

b. Our Political Leaders Do Not Reflect Our Nation’s Growing Diversity

Prior to the current round of redistricting, political representation in the United States was already sharply skewed. In 2019, people of color made up 39% of the U.S. population but only 12% of elected officials across the country, according to an analysis of nearly 46,000 federal, state, and local officeholders.74 Put another way, White Americans occupied nearly 90% of elected offices in the U.S. despite forming just over 60% of the population.

c. Underrepresentation of People of Color is Likely to Get Worse in the Coming Decade

The current districting process threatens to make this skewed representation even worse. The nation has grown substantially more diverse since 2010,75 but political representation is not on track to reflect this growing diversity—and Black and brown Americans are likely to see their representation remain static or even lose ground in many places rather than see their power increase with their numbers.

The White population has decreased from 63.7% to 57.8% of population since the 2010 Census, meaning that more than 42% of Americans are now people of color.76 The Latino population grew by 23% since 2010, compared to just 4.3% non-Latino

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76 Id.
The Black population grew by nearly 6%. This growth was even starker among voters of color. One 2021 report projected that nearly 80% of the growth in voting eligible population would be through people of color, including 17% from Black voters.

In the leadup to the current districting cycle, Brennan Center districting expert Michael Li issued a report citing the loss of Section 5 and narrowing of Section 2 of the Voting Rights Act to warn that in substantial parts of the country “there may be even greater room for unfair processes and results than in 2011, when the nation saw some of the most gerrymandered and racially discriminatory maps in its history.” So far, unfortunately, his predictions have largely borne out. In late November, Li noted that “[c]ommunities of color are bearing the brunt of aggressive map drawing,” citing Illinois, North Carolina, and Texas as bipartisan examples. In Texas, “communities of color accounted for 95 percent of the state’s population growth last decade. Yet, not only did Texas create no new electoral opportunities for minority communities, [but] their maps often went backwards.” The pattern has continued—so much so that Li noted just last week that “[p]eople of color are getting shellacked in redistricting” this cycle.

A December 2021 New York Times article detailed how Black elected officials are being systematically driven from positions of power by carving up their districts and at times forcing them to run against other incumbents. The article cites at least two dozen examples, including former Congressional Black Caucus chair G.K.

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80 Id. at 3.
82 Id.
83 Michael Li @mcpLi), Twitter (Jan. 13, 2022, 2:53 PM), https://twitter.com/mcpLi/status/1481711199620198616.
Butterfield of North Carolina, who is retiring and called the situation a “five-alarm fire.” LDF’s own Deputy Director of Litigation Leah Aden averred that “[w]ithout a doubt it’s worse than it was in any recent decade.”

B. **Critical Midterm Elections Are Here, Without Federal Protections**

As more maps are drawn each day, the 2022 elections are set to begin: early voting for the March 1 Texas primary starts in just 25 days. Without much-needed federal protections, Black and brown voters will be heading to the polls facing new restrictive and suppressive laws.

LDF client and 2020 Texas election judge Jeffrey Clemmons is concerned about the state’s new voter suppression law’s effect on its ability to run a smooth primary in the coming weeks. “Without some [] federal protections for poll workers, we’re going to be facing a shortage again,” he says. “I don’t think that we’re going to be able to fill all those positions this time around because of the fear of prosecution that’s come from bills like S.B. 1 that place all these new onerous restrictions on election workers to do their job.”

Vote-by-mail could serve as an alternative, but the state’s fifth-largest county has rejected approximately half of its recent ballot applications, citing S.B. 1’s new requirements. The counties housing Houston and San Antonio have also reported substantial rejection rates. It is highly likely that thousands of Texans will be disenfranchised in the first test of the new law in the nation’s first 2022 primary election.

C. **Emboldened by Congressional Inaction, States Will Pass More Anti-Voter Laws**

The threat from state laws that increase barriers to the ballot or facilitate election subversion has not abated, but rather grown stronger in the face of congressional inaction. Of the more than 400 bills introduced last year, at least 152 in 18 states have carried over into the coming legislative session, and more than a dozen bills were pre-filed by December in anticipation of the 2022 session. We
expect to see hundreds more introduced and dozens more passed in hard-right legislatures in the months to come. Like in 2021, we expect these bills to target the specific ways that Black and brown voters have made their voices heard in recent elections. Absent congressional action, it will be harder to vote in 2022 for millions of Americans.

In a particularly egregious example, just this week Florida Governor Ron DeSantis asked the state legislature to fund an unprecedented election crimes police force, accountable to the Governor with a mandate to “investigate, detect, apprehend, and arrest anyone for an alleged violation” of the state’s election laws.\(^92\) The proposal alarmed local elections officials and the legislature has yet to take it up—but some are already touting it as a “model” for other states.\(^93\)

D. Election Subversion Plans Are in High Gear

With no pushback from Congress, those intent on subverting the next election by continuing to raise doubts about 2020 are becoming more brazen, not less. Secretary of State races formerly about election mechanics or perhaps how much to expand voting opportunities these contests are now being driven by inaccurate claims regarding election legitimacy. In about half of this year’s 27 Secretary of State contests there is at least one candidate who claims the 2020 election was stolen or otherwise questions its legitimacy.\(^94\) The explicit strategy is clear—sow distrust in the electoral process.

IV. **Litigation is a Critical Yet Limited Tool to Protect Black and Brown Voters**

In the face of such sustained threats, LDF and our partner organizations have stepped up our litigation efforts across the country. We are using the tools we have—


\(^93\) Id.

\(^94\) *The Big Lie Lives On, And May Lead Some to Oversee The Next Election*, NPR (Jan. 6, 2022), https://www.npr.org/transcripts/1070964391. Candidates have claimed that Georgia “certified the wrong result” and that “200,000 people are illegal voters” in the state; that Michigan added dead people to the voter file, while calling for an Arizona-style audit; that there were up to 35,000 “fictitious voters” in Pima County, Arizona; and that there was a group of secretary of state candidates “doing something behind the scenes to try to fix 2020 like President Trump said.” Ian Vandalwalker & Lawrence Norden, *Financing of Races for Offices that Oversees Elections: January 2022*, Brennan Center for Justice (Jan. 12, 2022), at 15, fig. 7, https://www.brennancenter.org/our-work/research-reports/financing-races-offices-oversees-elections-january-2022.
the Constitution and a weakened Voting Rights Act—to counter the recent wave of voter suppression laws and push state legislatures to respect Black voters' voices in the districting process. We can curb the worst abuses, but we cannot fully protect our communities or make affirmative progress without congressional action.

A. Pushing Back on Voter Suppression Laws

Had the Supreme Court not gutted the heart of the Voting Rights Act in 2013, many of the restrictive voting laws passed in 2021 would not have gone into effect. Five of the 19 states that passed restrictive laws were fully covered by the VRA's preclearance provisions. Now affected voters are forced to push back piecemeal, using the Constitution's protections against intentional vote discrimination and the Voting Rights Act's remaining protections against discriminatory impact. In Justice Ginsburg's words, we are fighting the Hydra.

LDF is currently litigating cases against 2021 voter suppression laws in Georgia, Florida, and Texas. These cases have survived multiple attempts to block aggrieved voters from having their day in court—such as motions to dismiss or for summary judgment—demonstrating the seriousness of their discrimination claims.

a. Georgia

Georgia wasted no time translating the backlash against the rising voices of voters of color into legislative action to restrict the franchise. On January 7, 2021—two days after the Runoff Election, and the day after the Insurrection—Georgia House Speaker David Ralston announced the creation of a Special Committee on Election Integrity (“EIC”). By early February, Georgia legislators had filed sweeping legislation to limit early and absentee voting.

LDF, jointly with the Southern Poverty Law Center (“SPLC”), provided oral and written testimony throughout the session to oppose omnibus bills restricting access to the right to vote, explaining that these bills would disproportionately harm low-income voters and voters of color. Yet, the Georgia General Assembly refused

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to conduct any racial-impact study of these bills—legislation that would carry forward the state’s troubling history of voting discrimination.98

On March 17, 2021, with little notice to EIC members, let alone members of the public, an EIC member introduced a substitute bill to Senate Bill 202 (“S.B. 202”), which expanded from three pages to over ninety pages just hours before a full hearing. With limited opportunity for meaningful engagement and review, the EIC rushed S.B. 202 through additional hearings. On March 25, 2021, the House and Senate passed S.B. 202, and the Governor signed it into law during a closed-door session.99 One of the most restrictive voting laws of recent years, S.B. 202: (1) severely limits mobile voting; (2) imposes new identification requirements for requesting and casting an absentee ballot; (3) delays and compresses the time period for requesting absentee ballots; (4) imposes new restrictions on secure drop boxes; (5) implements out-of-precinct provisional ballot disqualification; (6) drastically reduces early voting in runoff elections; and (7) criminalizes the provision of food and water to voters waiting in line to cast a ballot.100

On March 30, 2021, LDF, along with allies, filed a lawsuit, later amended, in the Northern District of Georgia, which challenges S.B. 202 on behalf of several groups including the Sixth District of the African Methodist Episcopal Church, the Delta Sigma Theta Sorority, Inc, Georgia ADAPT, Georgia Advocacy Office, and Southern Christian Leadership Conference.101 Plaintiffs raise the following federal constitutional and statutory voting claims: (1) intentional racial discrimination and discriminatory results under Section 2 of the VRA; (2) intentional racial discrimination under the Fourteenth and Fifteenth Amendments; (3) an unconstitutional burden on the right to vote under the First and Fourteenth Amendments; and (4) an unconstitutional burden on the right to freedom of speech and expression concerning the ban on line relief under the First Amendment. Plaintiffs are also challenging S.B. 202 for discrimination on the basis of disability under Title II of the American Disabilities Act, discrimination on the basis of

98 Since the 2013 Shelby decision, the State of Georgia has enacted voting restrictions across five major categories studied by the U.S. Commission on Civil Rights: voter identification requirements, documentary proof of citizenship requirements, voter purges, cuts to early voting, and polling place closures or relocations. Democracy Diminished. NAACP LDF (Oct. 6, 2021), at 25-32. https://www.naacpldf.org/wp-content/uploads/Democracy-Diminished-10.06.2021-Final.pdf
101 Id.
disability under Section 504 of the Rehabilitation Act of 1973, and a violation of the Civil Rights Act of 1964’s prohibition on immaterial requirements to voting.

In December 2021, the U.S. District Court, Northern District of Georgia denied Defendants’ motion to dismiss our claims, so the case is moving forward towards discovery and a potential trial.

b. Florida

Florida was not far behind Georgia in channeling backlash into new voting restrictions. On May 6, 2021, Governor DeSantis signed into law a broad voter suppression bill known as S.B. 90. The same day LDF filed a lawsuit on behalf of the Florida State Conference of the NAACP, Disability Rights Florida, and Common Cause against the Florida Secretary of State, challenging multiple provisions including: (1) restrictions and new requirements for standing VBM applications; (2) limitations on where, when, and how drop boxes can be used; and (3) a vague and overbroad prohibition on conduct near polling places, including potentially criminalizing offering free food, water, and other relief to Florida voters waiting in long lines.

On October 8, 2021, Chief Judge Mark E. Walker denied the Secretary of State’s motion to dismiss with respect to most of our claims, noting that the allegations of intentional discrimination in our complaint drew “a straight, shameful line from the discriminatory laws of the 1880s to today.” Judge Walker also denied Defendants’ motions for summary judgment on all but one claim on December 17, 2021. The case is set for a 10-day bench trial beginning on January 31, 2022.

c. Texas

On September 7, 2021, Governor Abbott of Texas signed S.B. 1, one of the most restrictive voting laws in the country. During its passage, members and witnesses who raised concerns—and evidence—that the bill would harm voters of color and voters with disabilities were largely ignored, or chastised for uttering the word “racism” in the debate. Texas House Democrats staged a walkout and eventually left the state to break quorum and prevent the passage of such a damaging bill. But...
proponents of the omnibus election bill rammed it through the legislative process, which the Governor aided by extending the normal legislative session twice and threatening the funding of legislative staff salaries.105

After submitting testimony and advocating against the bill as it made its way through the Texas legislature, LDF was ready. We filed a lawsuit challenging S.B. 1 on the same day it was signed.106

The passage of S.B. 1 was a direct backlash to the record voter turnout in Texas in the 2020 election cycle and in particular, the power that Black and Latino voters exercised at the polls. Expanded early voting, drive-thru voting, and 24-hour voting facilitated this record high voter participation, particularly for urban voters of color who were more likely to use these means of access. For example, approximately 1.6 million registered voters in Harris County: 1.3 million voted early in person; over 177,000 voted by mail; and over 200,000 voted on Election Day.107 S.B. 1 targeted means and methods of voting primarily used by Black and Latino voters. Among its many restrictions, S.B. 1 eliminates drive-thru voting and 24-hour voting, restricts early voting hours, restricts vote-by-mail opportunities and application distribution, and bans drop boxes—innovations that had given local counties the options and flexibility they needed to help eligible voters of all backgrounds and abilities cast a ballot, and that Black and Latino voters had disproportionately relied on to vote. S.B. 1 also imposes burdens and intrusive documentation requirements on individuals who provide assistance to voters or transport them to the polls, subjecting the assistants to the threat of criminal penalties for violations. Finally, by making it harder for election officials to regulate and supervise poll watchers, S.B. 1 empowers partisan poll watchers to interfere with election administration and to intimidate and harass voters at the polls. Already due to S.B. 1, Texas counties have been forced to reject a huge percentage of vote-by-mail applications.108

106 Our lawsuit is one of six challenging S.B. 1 that have been consolidated under La Unión del Pueblo Entero v. State of Texas, No. 5:21-ev-00844 (W.D. Tex.), including a case brought by the U.S. Department of Justice.
In our lawsuit, LDF, along with our co-counsel from The Arc and Reed Smith, argues that S.B. 1 discriminates against Black and Latino voters and burdens voters with disabilities in violation of the First and Fourteenth Amendments, Sections 2 and 208 of the Voting Rights Act, the Americans with Disabilities Act, and Section 504 of the Rehabilitation Act. We represent Houston Justice, the Houston Area Urban League, Delta Sigma Theta Sorority, Inc., and The Arc of Texas, organizations that have long worked to ensure Black and Latino voters, incarcerated voters, and voters with disabilities can access the franchise through providing voter education and voter assistance. We also represent a local election judge—a private citizen who at 22 years old, has already dedicated himself to civic engagement, including by volunteering to administer the 2020 election at his local polling place. Many of our clients testified against S.B. 1 and its predecessor bills in the Texas legislature, illuminating how the bill would block access to the ballot for voters of color and voters with disabilities.

LDF filed an amended complaint in the lawsuit on December 1, 2021, and is currently opposing a motion to dismiss and engaging in discovery. A bench trial is tentatively set for July 5, 2022 in federal court in Texas.

B. Fighting for Fairer Maps

Discriminatory maps advanced without VRA Section 5’s protections are also being challenged through litigation. Six of the nine states formerly covered by Section 5 have completed at least some of their post-Census districting maps, and in five of these six states at least one map (and often more than one) is being challenged in lawsuits alleging racial discrimination. LDF is currently involved in redistricting lawsuits in Alabama and South Carolina, and we are monitoring the process and accessing the need to litigate in a number of additional places.

a. Alabama

Alabama has played a special role in the Civil Rights Movement, due in significant part to its shameful history of racial discrimination in voting. In 1992, litigation forced Alabama to create a congressional district that allowed Black voters a real opportunity to elect candidates of their choice. As a result, a Black

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congressperson was elected from Alabama for the first time since Reconstruction. Yet outside of that one district, Black candidates continue to face defeat in congressional elections, though many strong candidates have run and have attracted the support of the overwhelming majority of Black voters. Indeed, Alabama is one of only 10 states where no Black person has ever won statewide elective office.

For some time now, it has been possible to create two majority-Black congressional districts in Alabama. This is even more true now given that all of the state’s population growth in the last decade was driven by people of color.

Yet Alabama’s White power structure has refused to contend with the state’s growing diversity, preferring to maintain the status quo in a process that is anything but transparent. In September 2021, the state’s Legislative Reapportionment Office held 28 public hearings, all but one of which—at the State Capitol—were held during regular business hours when working Alabamians were unlikely to attend. Comments by the legislators overseeing the process indicated the outlines of the congressional plan had already been decided before the public hearings, yet no draft map was released until after the public comment period had closed. And no changes were made to the plans in response to public input. Moreover, although civil rights advocates and Black state legislators asked for a racial polarization study before the legislature adopted a map that continued packing Black voters into a single congressional district, no such study was conducted.

On November 4, 2021, Alabama enacted a congressional map under which Black Alabamians have a meaningful chance to see their preferred candidate elected, as declared by the court in *Milligan v. Merrill*, No. 2:21-cv-01530-AMM (N.D. Ala. Nov. 16, 2021) ("Milligan Compl.").

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116 Even in 1992, the Black population was large enough and geographically compact enough to create two majority-Black congressional districts, but Black leaders at that time believed an effective electoral opportunity for Black voters required significantly more than a bare majority. *Weech*, 785 F. Supp. at 1498.


119 Id. (quoting State Senator Jim McClendon stating that “there won’t be any surprises” in the new congressional plan).

120 *Milligan Compl.*, supra n. 122, ¶ 50-71.
in only one out of the state’s seven congressional districts. In other words, Black Alabamians are more than 27% of the population, but are a majority—and have a realistic chance of electing their preferred representatives—in only 14% of the state’s congressional districts. In contrast, White Alabamians are 63% of the population but form a majority in nearly 86% of the congressional districts. This is akin to one-person, half-a-vote for Black residents, and one-person, one-and-a-third-votes for White residents.

In November, after the state adopted a congressional plan that continued the status quo, LDF sued on behalf of Greater Birmingham Ministries, the Alabama State Conference of the NAACP, and five affected voters, demanding that the state create a second district that gives Black Alabamians an equal chance to see their preferred candidates represent them in Congress.

The lack of adequate representation in Congress has real consequences for Alabama’s Black communities. Shalela Dowdy, a community organizer and captain in the U.S. Army Reserves who is one of the plaintiffs in LDF’s congressional redistricting litigation, explained how elected officials work against the needs of Alabamians in the state’s Black Belt, who disproportionately lack access to health care. The region suffers from high rates of HIV and has been hit hard by COVID-19, regional hospitals have closed, doctors are often far away, and residents often cannot afford health insurance. Despite these serious issues affecting their constituents, many Alabama legislators have refused to support expanding Medicaid under the Affordable Care Act.

The state legislative plan, adopted through the same process as the congressional plan, similarly distorts Black representation, and LDF has challenged this plan on behalf of Greater Birmingham Ministries, the Alabama State Conference of the NAACP, and four individual voters. District lines are drawn to pack and crack Black voters to limit their electoral effectiveness in the state legislature. Districts are drawn in a virtual menagerie of shapes that join disparate pockets of Black voters or carve up Black communities to limit their influence.

This distortion also works to deprive Black voters of influence on local issues. Under Alabama’s constitution, counties must seek authorization from the state

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122 Milligan Compl., supra n. 122.
124 Id.
legislature for any significant legislative changes, affecting issues from local water supplies to the structure of government. As a practical matter, those decisions are made by the delegation of state legislators who represent any part of the county.

Sanitation, perhaps the most basic foundation of human health, provides an apt example of how diluted representation at the federal and state levels can have a compounding effect. Alabama’s Black belt has long suffered from inadequate waste treatment—so much so that in November 2021 the Civil Rights Division of the U.S. Department of Justice opened an investigation into "whether the Alabama Department of Public Health and the Lowndes County Health Department operate their onsite wastewater disposal program and infectious diseases and outbreaks program in a manner that discriminates against Black residents of Lowndes County..." One Black belt resident who is forced to use a so-called “straight pipe” rudimentary homemade sewage system noted that as a result, "[w]e cannot put the toilet paper in the toilet like other people. We have to put it in the trash."

The $1 trillion infrastructure legislation passed with bipartisan votes in both the House and Senate in November 2021 offers a rare chance for transformation; the package contains nearly $12 billion to upgrade sanitation systems in small communities. Accordingly, the federal infrastructure package provides the opportunity to address the black belt’s longstanding waste treatment problems such as that seen in Lowndes County. The former mayor of Lowndes County called it a “once-in-a-lifetime chance to finally make things right, if we get it right.” Yet, the only member of Alabama’s congressional delegation to vote for the legislation was Rep. Terri Sewell, who represents the one district in the state where Black voters are able to select a candidate of choice.

Even now, there is no guarantee that the money will be used effectively or go to the places that need it most. While the funding is intended to be targeted to communities most in need, states have wide discretion in how to disburse it. According to the New York Times, “while the funding is likely to lead to substantial improvements, there are no guarantees it will deliver the promised benefits to

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125 Id. ¶ 33.
126 Id.

communities that lack the political power or the tax base to employ even the few employees needed to fill out applications for federal aid.\textsuperscript{132}

So, now each community is dependent upon their state representatives to help deliver much-needed funds. Again, Black Alabamans’ lack of equal representation threatens to cost them key resources.

\textit{b. South Carolina}

South Carolina has a long history of racial discrimination in voting and in the redistricting process in particular. During the four decades that the state was covered by the Voting Rights Act’s preclearance protections, the Department of Justice objected 120 times to racially discriminatory voting changes, and at least 27 of these objections involved state or local redistricting plans.\textsuperscript{133} And, in every redistricting cycle since Congress enacted the VRA, voters have been forced to go into court to seek redress from discriminatory maps.\textsuperscript{134}

In October 2021, LDF first filed suit regarding post-2020 Census redistricting in the state on behalf of the South Carolina State Conference of the NAACP and eight South Carolina voters.\textsuperscript{135} The initial complaint was the result of the legislature adjourning for the year without considering new maps, threatening to delay the process of drawing updated districts until the legislature was due back on January 11, 2022, which would have undermined the public’s and courts’ ability to evaluate the legality of new district lines before the March 30, 2022 filing deadline for primary elections.\textsuperscript{136}

The legislature did return to consider maps before 2021 came to a close, but failed to produce a congressional map and crafted state-level district boundaries that dilute the voices and votes of the state’s Black residents. On December 10, 2021 Governor McMaster signed into law Act 117 which set maps for the State House and Senate; and on December 23, 2021 LDF’s clients amended their complaint to

\textsuperscript{132} Thrush, \textit{supra} n. 143.
\textsuperscript{134} Id. ¶ 43.
\textsuperscript{136} Id.
challenge the State House map as a racial gerrymander that was the product of intentional discrimination.\textsuperscript{137}

South Carolina's map-drawing process was largely inaccessible and unresponsive to public input. In August and October of 2021, South Carolina NAACP sent letters to the House Committee expressing concern about lack of transparency and proposing legislative maps that would redress population disparities and create opportunities for Black voters to elect candidates of choice.\textsuperscript{138} The House Committee invited public input on its draft plan on November 10, with less than 48 hours' notice.\textsuperscript{139} The House Judiciary Committee subsequently amended and adopted the initial plan with no public input.\textsuperscript{140} During full House consideration of the plan, multiple Black legislators pointed out that it would result in several Black incumbents being forced to compete in primary elections, thereby reducing Black voters' voice in the legislature.\textsuperscript{141}

Ultimately, the House plan racially gerrymandered at least 28 districts through both “packing” and “cracking” and failed to account for geographic shifts in the state’s Black population that should have created more opportunities for Black voters to influence electoral outcomes.\textsuperscript{142}

c. Louisiana

In Louisiana, where Black people are an even larger share of the population than in Alabama, we are seeing the same pattern of packing Black voters under the guise of complying with the Voting Rights Act. The state is poised to pass redistricting plans that continue to pack Black Louisianans into a single congressional district stretching from New Orleans to Baton Rouge.\textsuperscript{143}

d. Drawing Local Lines

Congressional maps and statewide plans are critical, but far from the only arena where fair districting is under attack. The one-person, one-vote principle requires thousands of jurisdictions across the country to redraw lines every decade—from county commissions and city councils to school boards. In the absence of


\textsuperscript{138} Id. \textsuperscript{75}, 71.

\textsuperscript{139} Id.

\textsuperscript{140} Id. \textsuperscript{105–159}.

\textsuperscript{141} Id. \textsuperscript{91, 93}.

\textsuperscript{142} Id. \textsuperscript{85–95}.

preclearance, redistricting plans are being drawn that will affect the most intimate aspects of people’s lives for a decade with no serious scrutiny or oversight. LDF lawyers, trainers, organizers, and policy staff have spent the past six months working to make sure that local communities have the tools they need to engage meaningfully in the process. Non-profit organizations like LDF can fill some of the gap left by the *Shelby County* decision, but with no mandate that they affirmatively scrutinize and justify their redistricting plans, many localities are giving little heed to the requirements of the Voting Rights Act and the Fourteenth Amendment.

C. We Cannot Litigate Our Way Past This Threat

Although LDF has engaged in a robust litigation effort to protect Black voters, we cannot litigate our way out of the present crisis. Seeking to restore the freedom to vote through case-by-case litigation in the face of the current onslaught is like playing whack-a-mole with diminished tools. Voting rights litigation can be slow and expensive, often costing parties millions of dollars.\textsuperscript{144} The cases also expend significant judicial resources.\textsuperscript{145} Additionally, the average length of Section 2 cases is two to five years.\textsuperscript{146} In the years during a case’s pendency, thousands—and, in some cases, millions—of voters are effectively disenfranchised.\textsuperscript{147}

V. **CONGRESS HAS THE POWER & RESPONSIBILITY TO PROTECT OUR DEMOCRACY**

The purpose of the raft of 2021 voter suppression laws, the discriminatory redistricting process, and the efforts to sabotage election results is to prevent people of color from ever again asserting their full voice and power. We need Congress to step up to its responsibility to ensure that we can achieve full and fair representation. The legislation currently pending before the Senate, the Freedom to Vote: John Lewis Act (FTVJRLA), will address our current problems in several distinct ways.

First, the preclearance provisions of the Voting Rights Act would be restored and thus states with a recent history of discrimination in voting would be required to


\textsuperscript{145} 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).

\textsuperscript{146} 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.”)

submit the redistricting maps and voting laws for review before they went into effect.\textsuperscript{148}

Second, the legislation would restore and strengthen Section 2 of the Voting Rights Act giving litigators across the country more powerful tools to push back on discrimination. This includes restoring the legal standards for bringing Section 2 claims, \textsuperscript{149} and establishing a new nationwide prohibition against diminishing the ability of voters of color to access the ballot or elect candidates of choice.\textsuperscript{149}

Third, the FTVJRLA sets a broad set of minimum standards for ballot accessibility for federal elections which would preempt many of the restrictive practices deployed through the new state laws. States would be required to offer Same Day Registration, robust early voting and vote-by-mail opportunities, accept a broad range of voter identification, and more.\textsuperscript{150}

Fourth, the legislation outlaws partisan gerrymandering for congressional districts.\textsuperscript{151} This helps communities of color by undercutting a key excuse lawmakers give for undermining their political voice—it was about partisanship, not race—\textsuperscript{152} and by reducing the chances that leaders elected by these communities are marginalized within the elected bodies in which they serve.

Finally, the legislation contains a set of key protections against the harassment of election workers and subversion of our elections. This includes explicit new protections for election workers and election infrastructure, as well as a provision that prevents partisan bodies such as state legislatures from removing state and local election officials without due cause.\textsuperscript{153}

VI. \textbf{The Historical Stakes of this Moment}

The Supreme Court’s actions in \textit{Shelby} and \textit{Brnovich}; a four-year gap in the Department of Justice’s enforcement of voting laws;\textsuperscript{154} a global pandemic with

\textsuperscript{148} Freedom to Vote: John R. Lewis Act, H.R. 5746, 117th Cong. (2021–2022) § 9016(c)
\textsuperscript{149} Id. at §§ 9001-9002.
\textsuperscript{150} Id. at §§ 1031, 1202, 1301-1305, 1801.
\textsuperscript{151} Id. at §§ 5001-5008.
\textsuperscript{152} \textit{See e.g. Michael Wines, “Republican Gerrymander of North Carolina Maps is Upheld in Court,” THE N.Y. TIMES} (Jan. 11, 2022), \url{https://www.nytimes.com/2022/01/11/us/politics/north-carolina-redistricting.html}
\textsuperscript{153} Freedom to Vote: John R. Lewis Act, H.R. 5746, 117th Cong. (2021–2022) §§ 3001-3301.
sharply unequal consequences by race; the drive by States to raise new barriers to the ballot; and new attempts to subvert fair election outcomes after Election Day have come together to create an urgent crisis for our democracy, and especially for voters of color.

The recent Census confirmed that we are growing more diverse by the day and the great question before us is whether we will embrace a truly inclusive, multiracial democracy or retrench into racial hierarchy like we did during Jim Crow. We shall be a democracy in name only if we continue to allow voter suppression and discrimination to subvert the will of our nation’s increasingly diverse electorate.

VII. CONCLUSION

Historians will study the period between 2020 and 2025 for decades to come, seeking to explain the next century of American life. They will ask the question: Did we act when we had the chance, or did we squander our last, best hope to protect the freedom to vote and save our democracy? This moment, right now, January 2022, may be the pivotal moment. What we do now will shape the next century.

Black Americans have a special place in U.S. history, calling the nation towards its highest ideals. We have been raising alarm bells for years. Since the Supreme Court’s 2013 Shelby County, Alabama v. Holder ruling undercut the heart of the Voting Rights Act, LDF has stepped up our warnings about the devastating consequences for our democracy. During the House debate to reauthorize the VRA in 2006, the late Congressman John Lewis commented on the continued need for a preclearance framework: “Yes, we have made some progress. We have come a distance. We are no longer met with bullwhips, fire hoses, and violence when we attempt to register and vote. But the sad fact is, the sad truth is discrimination still exists, and that is why we still need the Voting Rights Act.” Congressman Lewis’s observation remains equally true today, and it is fitting that the legislation before the U.S. Senate that can address our acute crisis is named after him. We call on the Senate to immediately pass this critical legislation.

Mr. COHEN. Thank you, Ms. Ifill, and thank you for your important work.

Our next Witness is Damon Hewitt. He is the President and Executive Director of Lawyers' Committee for Civil Rights Under Law. He has over 20 years of civil rights litigation and policy experience developed over numerous positions he has held in various organizations and nonprofits and public sectors. He has spent more than a decade of his counsel NAACP Legal Defense Education Fund and has authored numerous Law Review articles and the book, The School-to-Prison Pipeline: Structuring Legal Reform.

Mr. Hewitt received his J.D. from the University of Pennsylvania Law School and his B.A. from Louisiana State University.

Mr. Hewitt, you are recognized for five minutes.

STATEMENT OF DAMON HEWITT

Mr. HEWITT. Thank you, Chair Cohen, Vice Chair Ross, Ranking Member Johnson, Mr. Roy, and Members of this Subcommittee on the Constitution, Civil Rights, and Civil Liberties. My name is Damon Hewitt and I am President and Executive Director of the Lawyers' Committee for Civil Rights Under Law. I appreciate the chance to testify before you today about this series of on-going threats to voter suppression and election subversion posed to Black voters, Brown voters, and ultimately our entire democracy.

I join my fellow panelists in sounding the alarm to this Committee, the Full Congress, and the public about the urgent and substantial dangers we face as a nation due to the failure to adequately protect the fundamental right to vote to millions of people, particularly people of color, indigenous people, low-income people, senior citizens, students, and people with disabilities.

In reaction to the historic voter participation in 2020 and fueled by the big lie, voter suppression bills have spread like a cancer throughout the States over the past year and both brazen and violent efforts to subvert and overturn valid elections have ripped the nation. At the Lawyers' Committee, we have seen these efforts up close. We have litigated more voter rights cases in the past decade than even the U.S. Department of Justice including pending cases in States like Georgia and Texas on voter suppression and redistricting cases in those States, and also Illinois where we actually sued Mr. Roy and challenged Democrats for their erosion of the ruling strength of a Black community in East St. Louis.

We also represent U.S. Capitol Police officers in the civil rights lawsuit against the perpetrators and coconspirators responsible for the violent January 6th Capitol insurrection.

The voter suppression efforts and the violence we saw on January 6th actually share a common thread. These are deliberate acts by desperate people, those hell-bent on silencing millions of Black voters, Brown voters, young people, seniors, and others who turned
out during the 2020 election, all in the interest of maintaining personal and partisan power.

As you know, the Supreme Court has vetted the Voters Right Act preclearance provision, the formula, section 4 which enables section 5 in *Shelby v. Holder*. In the absence of preclearance, many States including those with the recent record of discriminating against Black voters have enacted harsh voter suppression laws and devised new mechanisms to hijack electoral processes, measures that now go immediately into effect.

In the past year alone, we are seeing bills that shorten the request period for mail-in ballots, impose strict signature requirements for vote by mail, adopt restrictions on how and when ballots can be delivered in terms of drop boxes and the like, and also closing polling place locations, in some cases reducing them down to one in the country, limiting voting hours and shortening the early voting period.

Georgia is a prime example. It is SB 202 which I believe Helen Butler will testify about later in this proceeding, but it is important to note that Georgia also enacted legislation that reconstituted several county election boards including those in places like Morgan, Troup, Lincoln, and Spalding Counties purging Black Members from those election boards. So, these bills are not just death by a thousand cuts. Those cuts are interspersed with deep and vicious gouges and gashes that we believe and allege are antidemocratic.

The amounts of voter suppression, because they target the means of voting that are most popular with communities of color, even those that have become more recently popular during the pandemic. They are specifically designed to make it harder for certain people to vote which is why we have alleged intentional racial discrimination in our litigation.

Remember, States like Georgia don’t just want to change the rules to prevent people from voting. They also want to prevent any sunlight or accountability for their actions, hence, the takeover of local election boards. In the absence of the prophylactic power of section 5 to stop this legislation through preclearance, impacted voters are left with less effective remedies.

During last night’s Senate floor debate, we heard one Senator point to litigation under section 2 in Texas and elsewhere as an indication that the Voting Rights Act still has some power. We believe it does have power, but let’s be clear. Section 2 is not an effective substitute for section 5. Section 2 litigation is more data intensive, time consuming, and expensive, but also it takes time for the courts to actually render a rule. By the time courts provide relief, sometimes the damage is already done, as I have indicated in my written testimony.

Without section 5 preclearance or robust section 2 standard which itself was also weakened and made cloudy about a Supreme Court decision in *Brnovich v. DNC*, we are in a pickle as a nation. We are in a crisis as a community, and we must address this today. Congress must pass the combined Freedom to Vote and John R. Lewis Act to strengthen the Voting Rights Act’s provisions.

Members, this hearing comes just five days after what would have been the 93rd birthday of the Reverend Dr. Martin Luther King, Jr. I want to leave you with his words: “Voting is the founda-
tion stone for political action. With it, we can eventually vote out of office public officials who bar the doorway to decent housing, public safety, jobs, and decent integrated education. The vote is essential.”

I believe that is exactly what some people are afraid of, that the vote is powerful, that the vote will be used by Black voters, Brown voters, and other voters of color, and other voters marginalized by voter suppression. Make no mistake, congressional action or obstruction or inaction in the face of these outrageous attacks on democracy is the moral equivalent on complicity in the acts themselves.

Thank you for your time. I will rely on my written remarks and testimony for the remainder of my time.

[The statement of Mr. Hewitt follows:]
STATEMENT OF DAMON T. HEWITT
PRESIDENT AND EXECUTIVE DIRECTOR
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
“VOTER SUPPRESSION AND CONTINUING THREATS TO DEMOCRACY”

JANUARY 20, 2022
I. Introduction

Chairman Cohen, Vice Chair Ross, Ranking Member Johnson, and Members of the Subcommittee on the Constitution, Civil Rights, and Civil Liberties, my name is Damon T. Hewitt and I am the President and Executive Director of the Lawyers’ Committee for Civil Rights Under Law (“Lawyers’ Committee”). Thank you for the opportunity to testify today on “Voter Suppression and Continuing Threats to Democracy.” The Lawyers’ Committee is a national civil rights organization created at the request of President John F. Kennedy in 1963 to pursue racial justice through mobilization of the private bar. Voting rights has been an organizational priority since the inception of the organization.

This hearing comes just five days after what would have been the 93rd birthday of the Rev. Dr. Martin Luther King, Jr., which we celebrated this last Monday. It is in the spirit of our national day of service, activism, and remembrance that I will turn first to Dr. King’s immortal words on why equal access to the right to vote is so critical to voters of color as “Civil Right No. 1”:

Voting is the foundation stone for political action. With it the Negro can eventually vote out of office public officials who bar the doorway to decent housing, public safety, jobs, and decent integrated education. It is now obvious that the basic elements so vital to Negro advancement can only be achieved by seeking redress from government at local, state, and federal levels. To do this the vote is essential.1

No eligible voting-age citizen, particularly historically disenfranchised Black voters, should be confronted with barriers designed to make it more difficult for them to register to vote. Nor should they be limited to “participating in an empty ritual”2 in which the ballots cast are rejected or are rendered meaningless by discriminatory procedures or redistricting practices. As Dr. King elaborated, for voters of color who have sacrificed so much in the service of this country, it would be “ironic to be governed, to be taxed, to be given orders, but to have no representation in a nation that would defend the right to vote abroad.”3

Unfortunately, that irony has become a reality for millions of Black voters and other voters of color across this nation. But the peril to American democracy is not limited to them. Every citizen is impacted, and our government rendered less legitimate, when voter suppression denies eligible citizens a voice in the political process. The same is true when actions are taken to subvert the will of the people through laws or actions to change election outcomes when officials in power disagree with the results. The January 6th Insurrection and efforts to usurp the apparatus of local elections boards and processes is a warning that we all must heed.

Today we find ourselves at a crossroads. In 2006, the same year that we saw a strong bipartisan reauthorization of the Voting Rights Act, the United States was ranked as a “Full

Democracy” by the Democracy Index. Less than two decades later, much has changed. In 2021, the United States is ranked as a “Flawed Democracy,” driven by growing efforts at the state and local levels to suppress voting and to subvert legitimate election results. As the Democracy Index’s authors explained, “public trust in the democratic process was dealt a blow by the refusal of Donald Trump and many of his supporters to accept the election result” in the 2020 elections. For similar reasons, in November 2021 the International Institute for Democracy and Electoral Assistance, a respected European think-tank, for the first time placed the United States on its list of “backsliding democracies.” It is widely believed among our allies that we have embarked on a dangerous path towards authoritarianism.

Recent polling confirms that most Americans agree that our democracy stands on the precipice. On the one-year anniversary of the January 6th insurrection, an NPR/Ipsos poll found that 64% of Americans believe U.S. democracy is “in crisis and at risk of failing.” Notably, those results were consistent across party lines, but for different reasons. Most Democratic respondents and respondents of color expressed concerns about growing efforts to suppress the vote and Republican-led hyper-partisan efforts to ignore the will of voters by subverting legitimate voting counts in order to declare victory for their own candidates. In contrast, two-thirds of all Republican respondents subscribe to the “Big Lie” that the 2020 presidential election was somehow stolen from former President Trump because of rampant fraud, with fewer than half saying they are willing to accept the results of the 2020 election.

Too many believe the way to win is to call their opponents cheaters and to make it as hard as possible for their opponents’ supporters to cast a ballot—even if it means them being deprived of any chance to vote at all. These forces have fractured our government, our politics, and our people. The inescapable truth is that voter suppression and subversion are not just undermining democracy, but threaten to destroy the very foundation of this nation, which rests upon the consent of the governed. Without immediate action to renew and restore the fundamental right to vote, we face the end of the “great experiment” of American democracy.

My testimony will focus on current racial discrimination in voting and efforts underway to subvert the will of voters. I will explain why it is critical that Congress immediately act to remedy the damage to racial equality in voting caused by the Supreme Court’s decisions in Shelby County v. Holder and Brnovich v. Democratic National Committee. I will offer examples of the Lawyers’ Committee’s post-Shelby litigation, as well as a summary of our forthcoming Election Protection report highlighting increased state-level efforts to suppress and subvert the vote.

My message to Congress is simple: The time to act in protecting the right to vote is now.

6 Laura King, As Capitol Riot Anniversary Nears, Western Allies Fear for Health of U.S. Democracy, LA TIMES, Jan. 4, 2022.
7 Six in 10 Americans say U.S. democracy is in crisis as the “Big Lie” takes root, NPR, Jan. 5, 2022, available at https://www.npr.org/2022/01/05/1069754164/americans-democracy-polit-jan-6.
II. Shelby County makes it harder to stop discrimination before it disenfranchises voters

A. 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 an effective means of preventing and remedying racial discrimination in voting. Section 2, which is discussed more fully below, remains as the general provision enabling the U.S. Department of Justice (“DOJ”) and impacted voters to challenge voting practices or procedures that have a discriminatory purpose or result. Section 2 applies nationwide.\(^\text{10}\)

Section 5 required jurisdictions with a history of racial discrimination in voting, based on a formula set forth in Section 4(b), to obtain preclearance of any voting changes from DOJ or the District Court in the District of Columbia before implementing the voting change.\(^\text{11}\) From its inception, there was a sunset provision for the coverage formula, and the sunset for the 2006 Reauthorization was 25 years.\(^\text{12}\)

Jurisdictions covered by Section 5 had to show federal authorities that the 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.\(^\text{13}\) Effect was defined as a change which would have the effect of diminishing the ability of people of color to vote or to elect their preferred candidates of choice.\(^\text{14}\) 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 that 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 within that timeframe, the covered jurisdiction could implement the change.\(^\text{15}\) 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 materially supplemented the submission.\(^\text{16}\) DOJ could also extend the 60-day period once by sending a written request for information to the jurisdiction.\(^\text{17}\) 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 using Section 5 Procedures,\(^\text{18}\) seeking preclearance from the federal court,\(^\text{19}\) and modifying

\(^{10}\) 52 U.S.C. § 10301.  
\(^{11}\) 52 U.S.C. §§ 10303(b), 10304.  
\(^{12}\) 52 U.S.C. § 10303(b).  
\(^{13}\) 52 U.S.C. § 10304(c).  
\(^{14}\) 52 U.S.C. § 10304(b), (d).  
\(^{15}\) 52 U.S.C. § 10304(a).  
\(^{16}\) Id. Procedures for the Administration of Section 5 of the Voting Rights Act (“Section 5 Procedures”), 28 C.F.R. § 51.37.  
\(^{17}\) Section 5 Procedures, 28 C.F.R. § 51.37.  
\(^{18}\) 28 C.F.R. § 51.45.  
\(^{19}\) 52 U.S.C. § 10304(a).
the voting change and resubmitting it for preclearance.

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 individual lawsuits. 20

In addition to the changes that were formally blocked, Section 5’s effect on deterring discrimination cannot be understated. Covered jurisdictions knew that their voting changes would be reviewed by an independent body and they had the burden of demonstrating that they were non-discriminatory. In the pre-Shelby County world, most covered 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 County world, a formerly-covered 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 was automatically sent to individuals and groups that electronically subscribed to receive the list. 21 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. 22 But even more important, the Section 5 process incentivized jurisdictions to involve the Black community and other communities of color in voting changes. DOJ’s Section 5 Procedures requested that jurisdictions with a significant population of people of color provide the names of community members of color who could speak to the change, 23 and DOJ’s routine practice was to call at least

21 Section 5 Procedures, 28 C.F.R. § 51.32-51.33.
22 Id. at 28 C.F.R. § 51.38(b).
23 Id. at 28 C.F.R. § 51.28(h).
one local community member of color to ask 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. 24

B. The Shelby County Decision

In the Shelby County case, the Supreme Court decided in a 5-4 vote that the coverage formula for Section 5 of the Voting Rights Act, found in Section 4(b), was unconstitutional. The majority held that because the Voting Rights Act "impose[d] current burdens," it "must be justified by current needs." 25 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. 26 The four dissenting justices found that Congress had demonstrated that regardless of what data was used to determine the formula, racial discrimination in voting had persisted in the covered jurisdictions. 27 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." 28

Shelby County effectively immobilized Section 5; following the decision, preclearance is now limited only to those jurisdictions where it is imposed by a court after a finding of intentional racial discrimination in voting. As a result, Section 5 is essentially dead without a modernized coverage formula, such as the one in the John R. Lewis Voting Rights Advancement Act of 2021. There are compelling reasons for Congress to act—predictably, racial discrimination in voting has increased in the absence of Section 5, and Section 2 cannot adequately substitute for Section 5.

C. The Impact 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 by virtue of the Court’s ruling. We predicted 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;

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24 Id. at 28 C.F.R. § 51.29.
26 Shelby County, 557 U.S. at 545-54.
27 Id. at 560 (Ginsberg, J. dissenting).
28 Id. at 556.
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 numerous defenses for jurisdictions, whereas Section 5 has a simple retrogression test.

The Shelby County decision, and DOJ’s interpretation that it also bars use of the coverage formula for sending federal observers to monitor elections, has left voting processes vulnerable to discrimination.\(^29\)

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

The Lawyers’ Committee’s Voting Rights Project has never been busier than in the post-Shelby County years, where we have participated as a counsel to a party or as amici in more than 100 voting rights cases. Because the Lawyers’ Committee has a specific racial justice mission, all of the cases we have participated in implicate race or racial discrimination in some fashion, even if there are no race discrimination claims in the case.

In previous testimony the Lawyers’ Committee provided in 2019, we reviewed the 41 post-Shelby County voting rights cases we had litigated up to that time. 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 in their entirety by Section 5 (Alabama, Arizona, Georgia, Louisiana, Mississippi, Texas, Virginia), as well as two of the states that were partially covered at the local level (North Carolina and New York).

- We achieved substantial success, either proving discrimination or achieving a settlement to address our claims in the vast majority of the cases. 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.\(^30\)

\(^{29}\) 2014 National Commission Report, supra, at 12, 55-64.

\(^{30}\) The difficulty in successfully challenging voting procedures adopted or implemented close to an election results from judicial application of the "Purcell Principle," in which the Supreme Court cautioned federal courts against issuing injunctions in voting rights cases close to an election. See Purcell v. Gonzalez, 549 U.S. 1, 4-5 (2006) (per curiam). The John R. Lewis Voting Rights Advancement Act would address the Purcell Principle by clarifying the circumstances under which it is appropriate for federal courts to grant relief in emergent voting rights litigation.
This data tells us that racial discrimination in voting remains substantial, especially considering that the Lawyers’ Committee is but one organization, and particularly in the areas previously covered by Section 5.

In 2019, the Lawyers’ Committee did a 25-year look back on the number of times that an official entity made a finding of voter discrimination. This 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 racial discrimination in voting, or where a jurisdiction changed its laws or practices based on litigation alleging racial discrimination in voting. We found that the successful court cases occurred in disproportionately greater numbers in jurisdictions that were previously covered under Section 5.

D. 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 its absence would have by pointing out that DOJ and private parties could still address 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.”

However, during the *Shelby County* litigation and the reauthorization process preceding it, defenders of Section 5 repeatedly pointed out why Section 2 was an inadequate substitute. Eight years of experience demonstrate this to be true.

This is hardly a surprise given that Section 5 and Section 2 were designed by Congress to complement one another and work in concert as part of a comprehensive set of tools to combat racial discrimination in voting. Section 5 was designed to prevent a specific problem—to prevent jurisdictions with a history of racial discrimination in voting from enacting new measures that would undermine the gains voters of color were able to secure through other voting protections, including Section 2. The Section 5 preclearance process was 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 voters of color are made worse off by the proposed change—is simple to determine in all but the closest cases. Section 5 is designed to have prophylactic effect 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—asking the question, will voters of color be worse off because of the change?

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32 *Shelby County*, 570 U.S. at 556.
In contrast, the Section 2 results inquiry is complex and resource intensive to litigate. As discussed in greater detail below in the context of the _Brnovich_ decision, 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). 33 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_, 34 before even getting to the Senate factors. These _Gingles_ preconditions require plaintiffs to show that a group of people of color is compact and numerous enough to constitute a majority of eligible voters in an illustrative redistricting plan and whether there is racially polarized voting (voters of color 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 have or currently produce discrimination against members of the protected class.” 35

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_ 36 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 DOJ had prevailed on the _Gingles_ preconditions on summary judgment, 37 and needed to litigate only the totality of circumstances in the district court. In sharp contrast, between 1965 and 2005, DOJ objected to 32 redistricting plans submitted by the State of South Carolina or its political subdivisions. Section 5 prevented those 32 plans from being implemented because of their discriminatory purpose or effect, thereby avoiding disenfranchisement of Black voters that would have occurred if each plan had to be challenged separately in the courts. 38

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. 39 The same afternoon that _Shelby County_ was decided, then-Texas Attorney General Greg Abbott announced that the State

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33 See _e.g._ _Thornburg v. Gingles_, 478 U.S. 30, 44–45 (1986).
34 Id. at 50–51.
39 _Veasey_, 830 F.3d at 227 n.7.
would immediately implement a restrictive voter ID law. Several civil rights groups, including the Lawyers’ Committee, filed suit in federal court, challenging SB 14 under several theories, including Section 2. DOJ filed its own suit under Section 2 and, ultimately, 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—half of whom were paid for by the civil rights groups—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 Black and Hispanic voters were two to three times less likely to possess the IDs required under SB 14 and 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, after being deemed to be discriminatory, remained in effect. Subsequently, a three-judge panel and later an en banc panel of the United States Court of Appeals for the Fifth Circuit, affirmed the District Court’s finding. As a result, the elections that took place between the day the Shelby County decision was handed down June 25, 2013 and the date of the Fifth Circuit’s en banc opinion on July 20, 2016 took place under the discriminatory voter ID law. Section 5 could have changed this result. Had Section 5 been enforceable, the discriminatory law would could have been prevented from going into effect, and 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 spent $3.5 million in defending the case. 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, the Arizona legislature passed a law that applied only to the Maricopa County Community College District, adding two at-large members to what was previously a five-member single district board. The legislature had submitted the change for Section 5 preclearance. The Department of Justice issued a letter requesting more information based on concerns that the addition of two at-large members, in light of racially polarized voting in Maricopa County, would weaken the electoral power of voters of color on the board. After receiving the letter, Arizona officials did not seek to implement the change—an indication of the prophylactic power of Section 5 to stop discrimination before it happens. However, after the Shelby County decision, they moved forward, precipitating the lawsuit brought by the Lawyers’ Committee and its partners. Section 5 was the most viable remedy under federal law because the facts on the ground allowed the jurisdiction to evade review under Section 2. 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 appellate court, 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 purge 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 unlawfully-removed voters being placed back on the register. Ultimately, plaintiffs and the Hancock County Board agreed to the terms of a Consent Decree that would remedy the violations, and required the county’s policies to be monitored for five years. But before this relief could be secured, Sparta, a predominantly Black city in Hancock County failed to elected a Black mayor for the first time 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. By the time Section 2 could offer relief, the damage was already done.

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 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 the one of these suits. 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, this onerous law would not exist. 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

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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.46

These restrictions were adopted right after the November 2020 election, where 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.47 Given this seemingly disproportionate impact on voters of color, if Georgia were subject to Section 5, these provisions likely 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. In the meanwhile, voters of color will suffer.

III. Brnovich reduces the effectiveness of Section 2 as a tool to stop voting discrimination

A. Section 2 of the Voting Rights Act

From the ratification of the Fifteenth Amendment in 1870 through the 1960s, the federal government tried—and failed—to defeat the “insidious and pervasive evil” of “racial discrimination in voting,” which had been “perpetuated . . . through unremitting and ingenious defiance of the Constitution.”48 Although Justice Frankfurter wrote long ago that the Fifteenth Amendment targeted “contrivances by a state to thwart equality in the enjoyment of the right to vote” and “nullifie[d] sophisticated as well as simple-minded modes of discrimination[,]”49 prior to the Voting Rights Act’s passage, this language proved largely aspirational.50

Responding to the states’ tenacious “ability . . . to stay one step ahead of federal law,” Congress passed the Voting Rights Act to provide a “new weapon[] against discrimination.”51 The Act “reflect[ed] Congress’ firm intention to rid the country of racial discrimination in voting.”52 The essence of the Voting Rights Act’s protections was exemplified in Section 2, which provided: “No voting qualification or prerequisite to voting, or standard, practice, or procedure shall be imposed or applied by any State or political subdivision to deny or abridge the right of any citizen of the United

45 Id., ¶¶ 92-100.
48 See, e.g., Katzenbach, 310–15 (describing pre-Voting Rights Act efforts to enforce the Fifteenth Amendment).
50 Katzenbach, 383 U.S. at 315.
States to vote on account of race or color.  

Notwithstanding Section 2’s broad language, jurisdictions sought to evade its reach by placing “heavy emphasis on facially neutral techniques.” These “techniques” included everything from “setting elections at inconvenient times” to “causing . . . election day irregularities” to “moving polling places or establishing them in inconvenient . . . locations.” In one Mississippi county, voters were forced to “travel 100 miles roundtrip to register to vote.” In one Alabama county, “the only registration office in the county [was] closed weekends, evenings and lunch hours.” These regulations ostensibly governed the time, place, and manner of voting in a neutral way, but they “particularly handicap[ped] minorities.”

Against this backdrop, and responding to the Supreme Court’s plurality decision in City of Mobile v. Bolden, which had read into Section 2 a “discriminatory purpose” element, Congress expressly expanded Section 2, now codified at 52 U.S.C. § 10301. As amended, Section 2 prohibits any “voting qualification or prerequisite to voting or standard, practice, or procedure . . . which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color.” Congress further specified that, under Section 2, a violation is established if, “based on the totality of [the] circumstances,” the political processes leading to an election are not “equally open to participation” by voters of color so that they have less opportunity than white voters “to participate in the political process and to elect representatives of their choice.” By adopting this “results test,” Congress captured the “complex and subtle” practices which “may seem part of the everyday rough-and-tumble of American politics” but are “clearly the latest in a direct line of repeated efforts to perpetuate the results of past voting discrimination.”

Section 2 provides relief for both vote dilution—schemes that reduce the weight of votes cast by people of color—and vote denial—standards, practices, or procedures that impede people of color from casting votes or having their votes counted. Vote-denial cases were the paradigmatic, “first generation” cases brought under Section 2. Only later did the Supreme Court “determine[] that the Act applies to ‘vote dilution’ as well.”

54 Right to Vote, supra at 552.
55 Id. at 557–58.
57 Id. at 93–94.
58 Id. at 96.
61 Id. A claim for violation of Section 2 (and the Fourteenth Amendment) can still be based on a finding of intentional discrimination, by application of the settled standards for proving intentional discrimination as set forth in Village of Arlington Heights v. Metropolitan Housing Development Corp., 429 U.S. 252 (1977), which includes (1) the historical background; (2) the sequence of events leading to the challenged practice, including procedural and substantive deviations from normal process; (3) relevant legislative history; and (4) whether there is a disparate impact on any group. See, e.g., N.C. State Conference of N.A.A.C.P. v. McCrory, 831 F.3d 204, 220-21 (4th Cir. 2016).
63 See Richard Briffault, Last Guiltier and the Dilemmas of American Democracy, 95 COLUM. L. REV. 418, 423 (1995). The congressional record accompanying the 1982 Amendments is replete with examples of the discriminatory practices that concerned Congress. The House Judiciary Committee noted that counties in Virginia and Texas had instituted
Thirty-five years ago, in *Gingles v. Thornburg*, the Court recognized that Congress inserted the words "results in" to frame the Section 2 inquiry. Instead of asking whether, in a vacuum, a voting practice facially sounds as if it denies or abridges the rights of voters of color, the question is: in context, does the practice "interact" with pre-existing social and historical conditions to result in that burden? Answering this question requires courts to examine the challenged practice not as a theoretical postulate, but as a law or regulation that interacts with real-world conditions and must be evaluated through a fact-heavy, "intensely local appraisal," that accounts for the "totality of [the] circumstances."**6**

In *Gingles*, the Court explained the "essence of a § 2 claim is that a certain electoral law, practice, or structure interacts with social and historical conditions to cause an inequality in the [voting] opportunities enjoyed by black and white voters."**67** Recognizing Section 2's command that courts consider the "totality of circumstances," the *Gingles* Court looked to the Senate Report accompanying the 1982 amendments to compile a list of relevant "circumstances."**68** These nine social and historical conditions—the "Senate Factors"—include considerations such as the history of official discrimination in the jurisdiction (Factor One); the extent of discrimination in the jurisdiction's education, employment, and health systems (Factor Five); and whether the challenged practice has a tenuous justification (Factor Nine).**69**

Since *Gingles*, four different Circuits addressing vote-denial cases have used the foundation laid in that case to analyze these matters. This formulation distills Section 2 liability into a two-part test: (1) there must be a disparate burden on the voting rights of voters of color ("an inequality in the opportunities enjoyed"); and (2) that burden must be caused by the challenged voting practice ("a certain electoral law, practice, or structure . . . cause[s] an inequality") because the practice "interacts with social and historical conditions" of racial discrimination.**70** No other Circuit has put forth an alternative formulation.

### B. The Facts of *Brnovich*

That was the situation until the Supreme Court's decision in *Brnovich v. Democratic National Committee*. In *Brnovich*, the Court reviewed two Arizona voting practices: one mandated that votes cast out of the voter's precinct ("OOP") not be counted; the other prohibited the collection of mail-

**478 U.S. 30, 47 (1986).**

**65 Id. at 79 (quotation marks omitted).**

**66 52 U.S.C. § 10301(b).**

**67 Gingles, 478 U.S. at 47.**

**68 Id. at 36-37 (citing Senate Report at 28-29).**

**69 Gingles, 478 U.S. at 47; accord League of Women Voters of N.C. v. North Carolina, 769 F.3d 224, 240 (4th Cir. 2014); Texas v. Abbott, 830 F.3d 216, 244 (5th Cir. 2016) (en banc); Ohio State Conf. of N.AACP v. Husted, 768 F.3d 534, 554 (6th Cir. 2014); DNC v. Hobbs, 948 F.3d 989, 1017 (9th Cir. 2020) (en banc); Farrakhan v. Washington, 338 F.3d 1009, 1011–12 (9th Cir. 2003).**
in ballots by anyone other than an election official, a mail carrier, or a voter’s family member, household member or caregiver. Plaintiffs had claimed that these practices violated Section 2 of the Voting Rights Act.

The United States District Court for the District of Arizona had ruled against the plaintiffs on both claims, but, applying the settled standards described above, the en banc United States Court of Appeals for the Ninth Circuit had reversed, finding that the out-of-precinct policy violated the “results” prong of Section 2 and that the limitations on collections of absentee ballots violated both the “results” and “intent” prongs of Section 2.

As to the out-of-precinct policy, the Ninth Circuit identified several factors, acknowledged by the district court, leading to a higher rate of out of precinct (OOP) voting by voters of color than by white voters: frequent changes in polling locations (polling places of voters of color experienced stability at a rate 30 percent lower than the rate for whites); confusing placement of polling locations (indigenous populations in particular lived farther from their assigned polling places than did white voters); and high rates of residential mobility. As a result, 1 in every 100 Black voters, 1 in every 100 Latinx voter, and 1 in every 100 indigenous peoples voter cast an OOP ballot, compared to 1 in every 200 white voters.

As to the absentee-ballot collection limitation, the Ninth Circuit relied on the district court’s finding that voters of color were more likely than white voters to return their early ballots with the assistance of third parties. The disparity was the result of the special challenges experienced by communities that lack easy access to outgoing mail services, socioeconomically disadvantaged voters who lacked reliable transportation, and voters who had trouble finding time to return mail because they worked multiple jobs or lacked childcare services, all burdens that disproportionately fall on Arizona’s voters of color.

Applying the “totality of circumstances” test, with primary reliance on the Senate factors that demonstrated a history of discrimination in Arizona that persists to this day, the Ninth Circuit found that both the OOP policy and the absentee-ballot collection law violated the “results” prong of Section 2 of the Voting Rights Act. The court also found that the absentee ballot law had been enacted with discriminatory intent, based on statements of the sponsor and a racist video used to promote passage of the law.

C. The Brnovich Decision: Its Meaning, and Its Consequences

In Brnovich, a 6-3 Court reversed the Ninth Circuit’s decision. Had it done so by applying the settled standards, we may not be here today. But, in writing for the Court’s majority, Justice Alito created guidelines for future treatment of Section 2 vote denial “results” cases that were not
only new, but also contrary—or at least dilutive of—the decades-long accepted standards. The
guidelines reflect lack of understanding, or lack of concern, about how racial discrimination operates
in practice.

Brnovich does not spell the end of Section 2 cases. Rather, it unnecessarily and unreasonably
makes it more difficult for impacted voters to win Section 2 actions, when they already were difficult
to win. And it does so in a way that flies in the face of congressional intent. Further, it raises too
many ambiguities in too many important areas to leave it to the courts to fill in the blanks. The
greater difficulty and ambiguity threaten to undermine the core purpose of the Voting Rights Act.

1. Brnovich is a solution in search of a problem

First, Brnovich purports to cure a non-existent problem. One of the premises of Brnovich is
that “[i]n recent years, [Section 2 vote denial claims] have proliferated in the lower courts.” In
support of this statement, the Court relies on the amicus curiae briefs of Sen. Ted Cruz, the State of
Ohio, and the Liberty Justice Center. However, those briefs describe a total of perhaps 16 cases,
dating back over seven years, and only three of them led to a finding of Section 2 liability. That
number of cases is hardly indicative of a floodgates problem.

The fact is that since Congress amended Section 2 in 1982 and since the Supreme Court
supplied its test for adjudicating Section 2 violations, the Court has never deemed it necessary to
review a single Section 2 vote-denial case. At the same time, there was absolutely no evidence that
lower courts were being overwhelmed by Section 2 vote denial cases. And when such cases were
brought, lower courts had no trouble applying the standard to separate discriminatory voting practices
from benign election regulations. In short, the pre-existing standard worked well, and there was no
reason to disturb it.

2. Brnovich reads a critical remedial statute too narrowly

One of the most important canons of statutory construction—and one that gives the greatest
dereference to congressional intent—is that remedial statutes are to be broadly construed, and there
are few statutes in this Nation’s history with greater remedial value than the Voting Rights Act of
1965. Yet, rather than read the Act expansively, the Court created new stringent “guideposts,” most
prominently suggesting higher standards for both the size of the burden and the size of the disparity,
and a lower standard for the State to meet to justify the burdens it is placing on the right to vote.

The purported touchstone of the Brnovich opinion is the Court’s construction of the
requirement in Section 2(b) that the political process be “equally open,” which it describes as the
“core” requirement of the law. The concept of equal “opportunity” as used in the same statute, the
Court acknowledged somewhat grudgingly, “may stretch that concept to some degree to include
consideration of a person’s ability to use the means that are equally open.” In that context, the Court

79 Id. n.6.
at the subtle, as well as the devious, state regulations which have the effect of denying citizens their right to vote”);
82 Brnovich, 2021 WL 2690267, at *12 (emphasis in original).
turned to the “totality of the circumstances” test, and found that “any circumstance that has a logical
bearing on whether voting is ‘equally open’ and affords equal ‘opportunity’ may be considered,” and
proceeded to list five “important circumstances” that were relevant. 83

Some of these “important circumstances” seem fairly innocuous on their face: e.g., the size
of the burden, the size of the disparity. Others not so much: e.g., the degree of departure of the
challenged practice from practices that were standard when Section 2 was amended in 1982 or which
are widespread today, and the opportunities provided by the electoral process as a whole. Another
has never been deemed relevant to Section 2 analysis: the strength of the state’s justification for the
practice—except in connection with assessment of the tenuousness of that justification. Overall,
however, the devil is in the details, and in the ambiguities created by the Court’s specific choice of
language that may pave the way for state legislatures to enact additional discriminatory laws and for
lower courts to apply Section 2 parsimoniously in vote denial “results” cases.

3. The size of the burden should include factors specific to the affected
community resulting from discrimination

The first factor that Justice Alito highlighted was the “size of the burden,” emphasizing that
voters “must tolerate the usual burden of voting.” 84 The application of this “guidepost” by legislatures
and lower courts might be colored by a footnote at the end of the paragraph on burden, where Justice
Alito expounded on what “openness” and “opportunity” might mean (as, say, with museums or
school courses that are open to all) as compared to the “absence of inconvenience” (such as lack of
adequate transportation or conflicting obligations). 85 The vagueness with which the Court left this
issue, and its relegation to a footnote, may limit its precedential impact, but its practical impact may
be substantial.

What Justice Alito does not acknowledge is that some of these indicia of what he calls
“inconvenience” are themselves not simply subjective to an individual, but, are reflective of a group’s
socio-economic circumstances, that are themselves the product of a history of discrimination. In the
Texas Photo ID case, for example, we were able to demonstrate that not only were Black and Latinx
voters more likely than white voters not to possess the required photo ID, but that they were more
likely than white voters not to be able to get the ID because of, among other reasons, lack of access
to transportation. 86

The same logic might apply to polling place location and closure decisions that might make
it just that much more burdensome for voters of color than for white voters to vote. Or, as in the new
Georgia statute, SB 202, prohibiting line relief - the provision of food and water to those waiting in
line to vote - particularly when voters of color are much more often confronted with long wait-times
than are white voters. 87

83 Id.
84 Id.
85 Id.
86 Veevey v. Abbott, 830 F.3d 216, 251 (5th Cir. 2016) (en banc).
State Conference of the NAACP v. Raffensperger, First Amended Complaint, at 90; Stephen Fowler, Why Do Nonwhite
Georgia Voters Have To Wait In Line For Hours? Too Few Polling Places, Georgia Public Broadcasting, Oct. 17, 2020,
available at https://www.npr.org/2020/10/17/924527679/why-do-nonwhite-georgia-voters-have-to-wait-in-line-for-
Mandating additional voter ID requirements in order to apply for an absentee ballot or to return a voted absentee ballot is another new hurdle voters will now face in Georgia under its new omnibus bill. Under this provision, voters requesting an absentee ballot must submit with their application their driver’s license number, their personal identification number on a state-issued personal identification card, or a photocopy of other specified forms of identification. For voters who do not have a Georgia’s driver license or state ID card number, voting absentee will now require access to photocopy technology. Voters without such access to technology will face a higher burden in complying with these ID requirements. Recent data shows that Black Georgians are 58% more likely and Latinx Georgians are 74% more likely to lack computer access in their homes as compared to their white counterparts. Thus, we can expect voters of color to face a significantly higher burden than white voters in complying with the ID requirements for requesting and returning absentee ballots.

If Brnovich is construed by state legislatures as permitting them to impose barriers that affect various racial or ethnic groups differently because of their relative wealth—particularly when those differences are themselves the product of historic discriminatory practices—it will have a devastating impact on the voting rights of persons of color.

4. 1982 standards and widespread practice should not be dispositive

Second, Justice Alito said that other relevant factors included the degree of departure of the challenged practice from the “standard practice when §2 was amended in 1982”—a choice which is largely left unexplained, other than in rebuttal to Justice Kagan’s dissent, in which he writes, somewhat tautologically, that “rules that were and are commonplace are useful comparators when considering the totality of the circumstances.” Although the Court acknowledges that this would not apply to practices that themselves were discriminatory in 1982, the fact is that such benchmarks are neither necessary nor productive. If the history of voter discrimination in this country has taught us anything, it is that those who want to stop voters of color from voting change their methods with the times, and with changes in the ways voters of color are voting.

Again, Georgia is illustrative. In Georgia, state legislators responded to the record-shattering turnout of 2020 by passing omnibus legislation that restricts the right to vote at nearly every step of the process and disproportionately affects voters of color. Among its provisions, the law requires voter identification in order to request an absentee ballot and vote absentee; severely limits access to absentee ballot drop boxes; and significantly shortens the period in which voters can apply for and cast absentee ballots. These restrictions were adopted right after the November 2020 election in 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. But, Justice Alito’s reasoning may be construed as supporting the proposition that, if in 1982, Georgia did not make absentee ballots universally available, that could be a “highly important” consideration, even if voters of color are more heavily impacted than white voters by these changes. State legislatures should not be led to believe that they can get away with erecting new barriers to vote based on what they did 40 years ago.

hour-to-flow-polling.nl

88 Georgia State Conference of the NAACP v. Raffensperger, First Amended Complaint, at 44.
89 2021 WL 2690267, at n 15.
90 Georgia State Conference of the NAACP v. Raffensperger, First Amended Complaint, at 47.
Further, Justice Alito also observed that the “widespread” present day acceptance of the voting practice could justify its use. But it was precisely because certain discriminatory practices were “widespread” that the Voting Rights Act was necessary. It seems incongruous, if not irrational, to justify discrimination against people of color on the basis of “widespread” acceptance.

5. **So-called “small differences” can be important**

Third, in explaining the importance of the size of the disparities, Justice Alito indicates that “small differences should not be artificially magnified,” again dealing obliquely with the consequences of the differences being caused by differences in wealth—which may themselves be the result of historic racial discrimination. Specifically, the Court criticized the Ninth Circuit for finding disproportionate impact based on a relative comparison of the percentage of voters whose votes were rejected because they were cast out of precinct. In the case of Indigenous, Black, and Latinx voters, the percentage was 1% for each group; in the case of white voters, the percentage was .05. The Court neglected to note that the out of precinct practice meant that almost 4,000 votes cast by voters of color had been rejected—and that if their circumstances were equivalent to those of white voters, 2,000 of their votes would have counted.

The Texas Photo ID case is illustrative. There, the court found that, even though over 90% of all groups had the required ID, Black voters were twice as likely as white voters not to have the ID, and Latinx voters were about three times as likely. In fact, the court found that 608,470 Texas voters lacked the ID. Obviously, the Texas numbers are meaningful no matter how viewed. But the point is that smaller numbers may be too. Legislatures and lower courts should not be led to believe that they can chip away at electoral margins by reducing the likelihood of voters of color being able to cast their votes, no matter how small the effect. We need not dwell on the closeness of the 2020 presidential election in Arizona, Georgia, and Wisconsin to underscore the importance of even small differentials in impact.

6. **The existence of other opportunities to vote do not necessarily ameliorate discrimination in particular methods of voting**

Fourth, Justice Alito explained that the opportunities provided by the entire electoral system should be factored into the equation, implying that, for example, access to absentee ballots may be curtailed, as long as the voter can still vote in person. But, if an advantageous means of voting is curtailed as to one group more than it is to another, what difference does it make that there may be other methods of voting? If all methods of voting made voting equally accessible, there would have to be only one method. Obviously, expanding methods of voting makes it more likely that people will vote. And, equally obviously, limiting methods of voting makes it less likely that people will vote. Limiting them in a way that affects some racial or ethnic groups more than others is inconsistent with the language and Congressional intent of Section 2—and of the entire remedial scheme of the Voting Rights Act. States should not be led to believe that they have carte blanche to target specific voting practices, when the effect is discriminatory, and try to justify it by the availability of other

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91 2021 WL 2690267, at *13.
92 Id. at *4.
94 2021 WL 2690267, at *13.
means of voting.

7. **Justification for discriminatory practices must be based on reality**

And, fifth, in explaining the state justification factor, the Court seemed to open the door to a state’s justifying virtually any discriminatory action simply by parroting the words “fraud prevention.”

Again, while the Court did not say so explicitly, the fear is that lower courts—and, worse, state legislatures—may so interpret the Court’s opinion.

The incongruity of the Court’s approach is seen in comparing the hundreds of thousands of voters who were potentially deprived from voting under Texas’s prior Photo ID law, with the infinitesimally small number of persons even accused of fraudulently voting. A state’s choice to prevent non-existent fraud at the expense of thousands of votes, disproportionately of person of color, is not legitimate. Again, permitting such choice, is inconsistent with the language of Section 2 and Congressional intent.

8. **The Senate Factors are relevant**

The *Brnovich* majority went on to raise questions as to whether the Senate Factors are relevant to a Section 2 vote denial case, implying they are not, but leaving ambiguous precisely what the Court means as to how the few Factors the Court deems potentially relevant fit in, other than superficially.

Although *Gingles* involved vote dilution, the decision addressed Section 2 writ large, recognizing that “Section 2 prohibits all forms of voting discrimination, not just vote dilution.”

Further, *Gingles* recognized the applicability of the various Senate Factors would naturally turn on the type of Section 2 claim at issue. The *Gingles* Court’s statement that the Senate Factors will “often be pertinent to certain types of §2 violations,” such as dilution, cannot be reconciled with a conclusion that the Factors “only” inform one specific type of Section 2 claim.

D. **The Growing Present Need**

As with the need for the resuscitation of Section 5, recent events reflect the significant present-day need for an immediate response to *Brnovich*. As detailed throughout this testimony, for example, the recently enacted Georgia voter suppression law, SB 202 increases the burdens for virtually every aspect of voting from voting by mail through voting in person. At least some aspects of SB 202 appear to be clearly retrogressive and probably would not have been proposed in the first place were it not for the decision in *Shelby County*. The effect of the *Brnovich* decision on the challenge to SB 202 remains to be seen, but already defendants have moved to dismiss the complaints on the basis of *Brnovich*. Although, we strongly believe that the complaints as drafted fully and adequately plead a “results” claim under Section 2 even post-*Brnovich*, the very making of these arguments demonstrates how those who support the erection of barriers to vote intend on using that...
Georgia, of course, is not the only state that is considering or has passed laws with new barriers to voting that disproportionately affect voters of color. Florida did so with SB 90, a law that, similar to Georgia’s, imposes new and unnecessary restrictions on absentee ballots, the use of drop-boxes, and line-warming. And at this writing, Texas has passed to pass an omnibus voting bill that would, among other things, empower partisan poll watchers with virtually unfettered access in polling places, while at the same time tying the hands of election officials to stop the poll watchers from engaging in intimidating conduct. Texas has a well-documented history of voter intimidation by poll watchers that has disproportionately affected voters of color. The courts have acknowledged this pattern before—in 2014, a federal district court described this very issue: “Minorities continue to have to overcome fear and intimidation when they vote. . . . [T]here are still Anglos at the polls who demand that minority voters identify themselves, telling them that if they have ever gone to jail, they will go to prison if they vote. Additionally, there are poll watchers who dress in law enforcement-style clothing for an intimidating effect to which voters of color are often the target.”

As with Georgia’s SB 202, some of these provisions might have been stopped by an effective Section 5 before they went into effect, and Section 2 challenges to some of them may be hampered by the effect of the Brnovich decision. The bottom line, however, is that recent events have only underscored the need for a robust Voting Rights Act.

IV. Ongoing efforts to undermine and subvert the record participation in the 2020 election.

During the 2020 Presidential Election, we witnessed the largest voter turnout in American history. For the first time, the United States exceeded 140 million people who voted, turning out at a record of 159,633,396 voters. Turnout was the highest in 120 years in terms of the percentage of voting-eligible population, with 66.7 percent casting ballots. President Biden became the first U.S. presidential candidate to receive more than 80 million votes, with a final tally of 81,283,098 votes, or 51.3 percent of all votes cast for President. Former President Trump received the second highest total of any U.S. presidential candidate, trailing President Biden by a little over seven million votes.

As a result of the pandemic, an unprecedented number of ballots were cast through Early Voting or vote-by-mail. Over 101.4 million voters in the Presidential Election cast their ballots before Election Day, nearly two-thirds of all ballots cast. Of those early votes, about 65.6 million were returned via mail-in ballots. Elections security experts lauded the 2020 Presidential Election as the “most secure in American history.”

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That conclusion was shared by then-President Trump’s own appointees. A joint statement issued by the Department of Homeland Security’s Cybersecurity & Infrastructure Security Agency, or CISA, concluded:

The November 3rd election was the most secure in American history … There is no evidence that any voting system deleted or lost votes, changed votes, or was in any way compromised. Other security measures like pre-election testing, state certification of voting equipment, and the U.S. Election Assistance Commission’s (EAC) certification of voting equipment help to build additional confidence in the voting systems used in 2020. While we know there are many unfounded claims and opportunities for misinformation about the process of our elections, we can assure you we have the utmost confidence in the security and integrity of our elections, and you should too. When you have questions, turn to elections officials as trusted voices as they administer elections.104

Despite this success, the 2020 Election and its aftermath highlighted some important challenges that remain. The Lawyers’ Committee received reports of barriers that prevented voters of color to register to vote, cast their ballot and to have their ballot counted. A little over 54 percent of all voters who called the 866-OUR-VOTE Election Protection Hotline and reported their race or ethnicity were voters of color. They reported several basic barriers to voting access, which disproportionately impacted voters of color:

- Restrictions or lack of information about voter registration;
- Lack of notice about the consolidation or closure of polling places;
- Purging of voter rolls in violation of the National Voter Registration Act;
- Lack of information about how to access vote-by-mail opportunities;
- Unreasonable vote-by-mail deadlines, due to mail delivery and return delays;
- Rejection of absentee ballots through misuse of signature-matching procedures;
- Restrictive voter identification laws, which failed to provide alternatives to voters lacking required information (such as those voters with nontraditional mailing addresses) or who do not have reasonable access to government offices that offer accepted forms of identification; and
- Long lines that resulted in hours long wait times due to an insufficient number of

voting machines or equipment malfunctions. We also received reports of violations of federal law, including the failure to provide language assistance in violation of Section 203 of the Voting Rights Act and the denial of assistance from a person chosen by the voter in violation of Section 208 of the Act. Many of these barriers were exacerbated by overwhelmed election officials who were unprepared and under-resourced for the unprecedented levels of voter participation.

Rather than working to remove existing barriers to voting, many states have taken a different path. Since the 2020 Election, several legislatures have introduced and passed legislation targeting a reduction in turnout by voters of color in future elections. As the Brennan Center for Justice reported in its most recent summary of pending voting legislation:

Between January 1 and December 7, at least 19 states passed 34 laws restricting access to voting. More than 440 bills with provisions that restrict voting access have been introduced in 49 states in the 2021 legislative sessions. These numbers are extraordinary: state legislatures enacted far more restrictive voting laws in 2021 than in any year since the Brennan Center began tracking voting legislation in 2011. More than a third of all restrictive voting laws enacted since then were passed this year. And in a new trend this year, legislators introduced bills to allow partisan actors to interfere with election processes or even reject election results entirely.\(^{105}\)

This trend is particularly threatening to the foundations of our democracy because the legislation that has been introduced, and in some cases enacted, does not stop at suppressing the votes of communities of color. Some legislation goes much further, allowing party officials to reject the will of the voters if those officials disagree with the election results.

These legislative actions, which are directed at the rejection of free and fair elections, place our nation on the dangerous path towards authoritarianism and totalitarianism. They deviate from basic norms of our democratic system, taking away what Dr. King described as the “foundation stone of political action”\(^{106}\) and making voters of color and others disfavored by those controlling the elections “that much less a citizen.”\(^{107}\) In the process, these anti-democratic laws would leave every American who disagrees with the party that controls the elections without any recourse to protect themselves from further repressive measures that systematically eliminate all of their basic civil and human rights.\(^{108}\)

The threat to American democracy is very real. We were confronted by the ugly specter of authoritarianism in the January 6th Insurrection that breached the sacred walls of our Capitol in an effort to prevent the peaceful transfer of power for the first time in our history. Stoked by the fanatical


\(^{106}\) Civil Right No. 1, supra.

\(^{107}\) Reynolds v. Sims, 377 U.S. 533, 567 (1964) (“To the extent that a citizen’s right to vote is debased, he is that much less a citizen.”).

rhetoric of a defeated President, his sycophants and other political opportunists, as well as white supremacist groups, directed a violent mob towards this building in a failed effort to stop the electoral count. We witnessed in real time the antisemitic and racist epithets that these violent insurrectionists hurled at the thin blue line of law enforcement officers protecting the Vice President and Members of Congress.¹⁰⁹

V. Immediate passage of the John Lewis Voting Rights Advancement Act and the Freedom to Vote Act is needed to protect the fundamental right to vote of all Americans.

The harm caused by Shelby County has been well-documented. The full effects of Brnovich remain to be seen. It is time for Congress to act. The full protections of the Voting Rights Act are desperately needed today, particularly given the steps already taken—or about to be taken—by legislatures in states such as Georgia, Florida, and Texas in the aftermath of the 2020 election to raise additional barriers to the vote that will impact voters of color more severely than white voters. Moreover, there is a legitimate concern that some state legislatures will be emboldened by their reading of Brnovich, as they were by the decision in Shelby, and view it as a signal from the Court to take even more suppressive action. We cannot allow partisan election officials to subvert the will of the majority when they disapprove of it.

Congress should immediately reassert its intention to fully protect the voting rights of voters of color in Sections 2 and 5 of the Voting Rights Act through the John Lewis Voting Rights Advancement Act and the Freedom to Vote Act.

Our recommended responses to the Shelby County and Brnovich decisions stem from the different scope and rationales of the decisions themselves. The complete evisceration of Section 5 wrought by the Shelby County decision necessitates a comprehensive remedy, but one that is instructed by the reasoning of that decision and therefore considers both the ongoing history of discrimination in voting in particular states and the current need for prophylactic measures to ensure that no state or sub-jurisdiction can implement a change in voting practices that discriminates against voters of color. The more limited impact of the Brnovich decision calls for a correspondingly focused response, one that zeroes in on the specific deviations of the Court from the clear intent of Congress in its 1982 amendments to Section 2.

Thus, our recommended response to the Shelby County decision starts with our support for provisions including a replacement coverage formula that would be applied to the preclearance provisions of Section 5 and the federal observer provisions of Section 8, and a transparency provision that requires all jurisdictions—irrespective of any coverage formula—to provide public notice of changes in voting practices.

It also is necessary to include an additional amendment to Section 2, tied to the transparency provision: the creation of a “retrogression cause of action,” which allows the Attorney General or private parties an opportunity to stop changes in voting practices anywhere in the country before they diminish the voting rights of voters of color. The retrogression cause of action would meet the current

need to stop suppressive laws that discriminate against voters of color, using a tried and true standard, with limited interference with state sovereignty, and without implicating issues relating to differentiation among the states.

Our recommended congressional response to Brnovich is more limited, as Congress does not have to completely rewrite Section 2. It simply has to remove any ambiguity in the statute caused by the Brnovich opinion, which gave short shrift to a substantial legislative record and decades of jurisprudence which run counter to the Brnovich majority’s constricted view of this remedial statute. Congress originally enacted and later amended Section 2 to stymie not only blatant, explicit discrimination, but also facially neutral voting laws that, through ingenious, sophisticated methods, had a significant impact on the right to vote for people of color. Consistent with this purpose, prior to Brnovich, the Supreme Court and several Courts of Appeal had adopted a standard to ensure the effective implementation of those protections. That standard recognized not only that the Act applies broadly to all voting procedures and policies that abridge the right to vote—whether expressly or subtly—but also that a challenged law cannot be viewed in isolation, because a seemingly innocuous voting practice can interact with underlying social conditions to result in pernicious discrimination.110

Under that standard, Section 2 has worked for decades as a judicially manageable mechanism to stop voting discrimination. There has been no flood of questionable Section 2 vote denial “results” cases, and no widespread invalidation of voting regulations. Indeed, Brnovich marked the first time since the 1982 amendments to the Act that the Supreme Court reviewed a pure vote-denial claim. The reason is clear: The lower courts have taken seriously the Court’s guidance, and carefully assessed the effects of challenged voting policies or procedures within each specific jurisdiction, based on the totality of the circumstances.

Brnovich compels an immediate response from this Congress, before some state legislators—intent on creating obstacles that disproportionately result in a negative impact on the rights of voters of color—hear it as a dog whistle to do just that, and before lower courts apply the opinion in ways that elevate unsubstantiated and untrue justifications for new burdensome voting practices over genuine and proved claims of racially discriminatory results.

In closing, as we celebrate the lives and legacies of Dr. King and Congressman John Lewis, let us heed their words. Dr. King powerfully observed, “Freedom is like life. It cannot be had in installments. Freedom is indivisible—we have it all, or we are not free.”111 Voting is foundational to securing that freedom. As Congressman Lewis explained, “The vote is precious. It is almost sacred. It is the most powerful non-violent tool we have in a democracy.”112

It is time for action. We must protect the fundamental right to vote for all Americans now, or else none of us will be free.

Thank you very much for your attention and your commitment to making voting fully accessible for all Americans. I welcome any questions you may have.

110 Gingles v. Thornburg, 478 U.S. 30, 47 (1986); accord League of Women Voters of N.C. v. North Carolina, 769 F.3d 224, 240 (4th Cir. 2014); Ferrey v. Abbott, 830 F.3d 216, 244 (5th Cir. 2016) (en banc); Ohio State Conf. of NAACP v. Husted, 768 F.3d 324, 554 (6th Cir. 2014); DVC v. Hobbs, 948 F.3d 989, 1017 (9th Cir. 2020) (en banc); Forrish v. Washington, 338 F.3d 1009, 1011–12 (9th Cir. 2003).


Mr. COHEN. Thank you, Mr. Hewitt, and I apologize. I understand I incorrectly referred to the NAACP Legal Defense and Educational Fund as Education Fund. So, I want to get that clear and thank you for your good work.

Mr. HEWITT. Thank you.

Mr. COHEN. Our next Witness is Mr. Thomas Saenz. Mr. Saenz has been with us before, distinguished President and General Counsel to Mexican American Legal Defense and Educational Fund of MALDEF, a position he has held since August 2009. He was also with MALDEF for 12 years and for eight years he taught civil rights litigation as an adjunct lecturer at the University of Southern California School of Law. Mr. Saenz received his J.D. with honors from Yale Law School; an undergraduate degree magna summa—summa cum laude from Yale. He is recognized now for five minutes.

STATEMENT OF THOMAS SAENZ

Mr. SAENZ. Thank you and good morning, Honorable Chair, Ranking Member, and Members of the Subcommittee. I am Thomas Saenz, President and General Counsel of MALDEF and as you noted, I have had the opportunity in the last year or two to address this Subcommittee about the critical importance of the John Lewis Voting Rights Advancement Act and, in particular, reintroducing preclearance as a powerful form of alternative dispute resolution to both prevent and efficiently deter voting rights violations by jurisdictions across the country.

Today, I have the opportunity to address the ongoing redistricting process that as you know occurs every decade throughout the country. We are midway through that process, but we already have some sense of what the impact of this first redistricting without the protections of preclearance will be.

For the Latino community that has shown substantial growth over the past several decades, every redistricting process since at least 1981 has presented the opportunity warranted by the growth of the Latino population to elect new officials who are responsive and selected by the Latino community.

This year should prove no exception. Our Census show that 51 percent of the entire country’s population growth in the last decade was from the Latino community. Latinos are now 19 percent of the total national population and have shown even higher rates of growth in particular States around the country. That opportunity that should have been occasioned through the Census demonstrated growth has not been realized.

Although we are midway through the process in some States and many localities are still going through the redistricting process, I can now quantify in some sense the impact of the failure to put in place the John R. Lewis Act and in particular, its preclearance formula.

MALDEF is in litigation against three States: Texas, Illinois, and as of yesterday, Washington, about their statewide redistricting processes. I choose these three States not just because we are litigating against them, but because they demonstrate the lie about the assertion that somehow the Voting Rights Act is a partisan tool used only against Republicans.
In Illinois, the process we challenged was entirely in the hands of Democrats. In Texas, yes, it was entirely in the hands of Republicans. In Washington State, notably, it was a redistricting commission rather than a partisan legislature that drew the lines that we now challenge.

In these three States and particularly in Illinois and Texas, both, we saw not just the failure to create new Latino majority districts in State legislature, Congress, and in the Texas State Board of Education, but also the dismantling of districts that were already Latino majority, either because they were drawn that way a decade earlier, or because they had developed through natural movement of population in the deemed majority Latino districts over the last decade. So, we saw both failures to create new districts and dismantling of existing Latino majority districts.

In these three States, we saw for the Latino community the price of the failure to enact the John Lewis Act in 18 lost Latino majority seats in Congress, State legislatures, and State Board of Education, 18 seats. I emphasize that because the unfortunate nature of vote suppression is we often cannot quantify the impact. Even at the primary level, we can only estimate how many eligible voters have been prevented from registering or casting a ballot. We can only speculate about how they might have voted and the impact on the election.

When it comes to secondary effects, we can only guess. We know it is devastating, but we can only guess at how many voters were deterred from participating themselves because a member of the family or community was prevented by vote suppression from casting a ballot. At the tertiary level, again devastatingly we know, but we can only guess at how many people have seen this cynicism about government increase because of vote suppression.

Through redistricting we can quantify the effects of the failure to enact the John Lewis Voting Rights Act. The Latino community now stands at 18 lost Latino majority districts, districts that would have allowed the growing Latino community present in this country from its very beginning in significant numbers since the mid-19th century and an increasing portion of our future would allow that community to elect candidates of choice to important legislative positions. That 18 is only the beginning because you are only midway through this process. That 18, however, demonstrates how critically important that the Senate acts to put in place the John Lewis Act and the preclearance formulas that are embedded within. Thank you.

Mr. COHEN. Mr. Saenz, your time has expired.

[The statement of Mr. Saenz follows:]
Good morning. My name is Thomas A. Saenz, and I am president and general counsel of MALDEF (Mexican American Legal Defense and Educational Fund), which has, for over 53 years now, worked to promote the civil rights of all Latinos living in the United States. MALDEF is headquartered in Los Angeles, with regional offices in Chicago, San Antonio, where we were founded; and Washington, D.C. We will soon open a new regional office in Seattle. I thank you for this opportunity to appear before you to address recent experiences nationally with effects on the voting rights of the Latino community. Today, I am testifying remotely from Los Angeles.

MALDEF focuses its work in five subject-matter areas: education, employment, immigrant rights, voting rights, and freedom from open bias. Since its founding, MALDEF has worked diligently to secure equal voting rights for Latinos, and to promote increased civic engagement and participation within the Latino community, as among its top priorities. MALDEF played a leading role in securing the full protection of the federal Voting Rights Act (VRA) for the Latino community through the 1975 congressional reauthorization of the 1965 VRA. In court, MALDEF has, over the years, litigated numerous cases under the Fourteenth and Fifteenth Amendments, and under Section 2, Section 5, and Section 203 of the VRA, challenging at-large systems, discriminatory redistricting, ballot access barriers, undue voter registration requirements, voter assistance restrictions, and failure to provide bilingual ballot materials. We have litigated numerous significant cases challenging statewide redistricting in Arizona, California, Illinois, Texas, and Washington; we have also engaged in pre-litigation advocacy efforts, as well as litigation related to ballot access and local voting rights violations, in those states, as well as in Arkansas, Colorado, Georgia, Nevada, and New Mexico.

Comparative rates of voter registration and voter participation among racial groups, including Latinos, continue to demonstrate that voter suppression — through vote denial, as well as vote deterrence — remains a salient flaw of our democracy. It is one of the unexplained ironies of our national discourse that an election — the 2020 presidential general election — that showed unprecedented numbers of voters participating, and rates of eligible participation unseen in a century, has not been universally celebrated as a milestone in reducing voter suppression, but has
instead been used to justify increased efforts to reduce minority voter participation in future elections.

The fact that one presidential candidate has refused to date to accept the legitimacy of his own substantial defeat at the polls was used and has continued to be used to justify voter suppression measures in too many states across our country. The unprecedented egotism of Donald Trump, despite positive past examples from presidents of both parties in graciously accepting electoral defeat, has led to an attempted insurrection and is currently catalyzing too many state and local attempts at suppression of minority voters.

Unfortunately, this continues a recent pattern of increasing voter suppression efforts. This longer-term increase stems from ongoing demographic changes, including in particular the unprecedented growth of the Latino voting community. Data released last month from the 2020 Census confirms this ongoing phenomenon. Latinos, while making up almost 19 percent of the total United States population, nonetheless accounted for over 51 percent of the nation’s population growth between 2010 and 2020. Moreover, contradicting assumptions that Latino population is overwhelmingly comprised of recent immigrants, over 44 percent of the growth in the United States citizen, voting-age population (CVAP) came from the Latino community in the ten years prior to 2019. CVAP growth is a useful proxy for growth in the eligible voter population. These changes are perceived as threatening to the long-term privilege of those currently in power who have failed to seek and to garner support among ascendant minority voter groups.

The reaction to demographic change of too many leaders is not to adjust policy positioning to appeal to the voter groups in ascendance, or to work to convince those voters to change their views, but instead to engage in expanded efforts at voter suppression. These suppression efforts have taken the form both of new mechanisms to obstruct, such as restricting access to food and water while waiting in line to vote, as well as through the proliferation of longstanding mechanisms to suppress meaningful participation, such as targeted voter purges, creation of at-large elected positions, and precinct changes that do not respond to recent elections’ in-person voting experiences. In addition, we have seen restrictions on voter registration through undue regulation of groups and individuals seeking to increase civic participation by registering voters, and we have seen attempts to limit the ability to vote remotely to a select group of voters that is generally whiter in proportion compared to the total voting-eligible population. The expected continued national demographic change, affecting more and more parts of the country, does not present reason for optimism that voter suppression will diminish nationwide in ensuing years.

While litigation, by private parties and by the Department of Justice, under Section 2 of the VRA remains a powerful means to stop voter suppression that has significant effects on minority voters, such litigation is not sufficient to face the current and future potential for elections changes tied inextricably to voter suppression. Litigation under Section 2 is costly — in direct resources and opportunity costs — and time-consuming. Federal regulation to ensure
greater uniformity of voter experience nationwide is critically important to prevent and deter voter suppression measures. In addition to direct regulation, reinvigorating pre-clearance review under the VRA also prevents and deters measures to restrict the vote, in and beyond covered jurisdictions. At the same time, pre-clearance review benefits jurisdictions by dramatically reducing their costs to defend elections-related changes, and benefits minority and other voters by yielding more timely resolution of voting rights disputes. In addition, litigation under Section 2 is too often unable to secure resolution before an election moves forward with the taint of voting rights violations attached; once an election occurs, it is virtually impossible for the court system to enforce a remedy that would undo the damage in that completed election.

Resources are simply insufficient to challenge all voter suppression measures under Section 2. When resources are insufficient, too many jurisdictions will gamble that they can violate voting rights without ever being restrained, or at least not until numerous elections have occurred, with the attendant damage of voter suppression affecting the outcomes in those elections. Such rational “gaming” of the legal system, catalyzed by inadequate resources to challenge all instances of voter suppression nationwide, undermines confidence in our democracy and presents a clear constitutional crisis.

Our nation’s history confirms, through multiple empirical examples, that growth of the population of a racial minority group, such as Latinos, frequently catalyzes attempts to limit and delay the growth in political and voting power that should accompany population growth in any democracy. Latinos and their demographic growth remain to this day a perceived “threat” to those who have exercised apical political power over long periods of time in many jurisdictions. This perception of “threat” to those in power from the significant growth of the Latino population often becomes most pointed during the decennial redistricting process. Incumbent officeholders of both political parties often seek to protect themselves from the growing Latino voter population by seeking a limited – and in some cases, substantially reduced – Latino proportion of the electorate in their specific districts. More broadly, incumbents, as well as those who support them, often seek to avoid the creation of new Latino-majority districts because such districts threaten incumbent officeholders, who may be squeezed into competing against one another, and may present a cumulative threat to an incumbent political group with substantial, controlling power. (In my testimony today, I use the term “Latino-majority district” to mean districts where Latinos comprise a majority of the citizen voting-age population (CVAP). As I note above, CVAP is an appropriate proxy for the voter-eligible population.)

The current redistricting process nationally has already conformed to this pattern, even as many jurisdictions, especially localities, continue the line-drawing and district adoption process. Retrogression – a reduction in the number of Latino-majority seats despite a growing population – and vote dilution – the failure to create new Latino-majority districts where Latino population growth and voting patterns warrant it – are both significant features of this decade’s redistricting process.
process to date. It would be no exaggeration to state that this has already become the decennial redistricting process most disrespectful of rules against vote dilution since the enactment of the VRA in 1965. Of course, that should come as no surprise because this is also the first decennial redistricting process since the Supreme Court decision in *Shelby County v. Holder*, 570 U.S. 529 (2013), in which the Court majority struck down the preclearance coverage formula, with no substitute formulae yet enacted by Congress.

MALDEF has already seen, and is currently litigating, some of the manifestations of this emboldened opposition to protections against vote dilution, despite the VRA’s clear, albeit now incompletely effectuated, prohibition on dilution. We have filed suits challenging aspects of statewide redistricting in Texas, Illinois, and Washington. I am confident that all three of these suits would have been unnecessary, or at least substantially limited, if the preclearance formulae passed by the House in the John Lewis Act were in place for this redistricting process.

In Texas, for example, MALDEF and numerous other legal groups have challenged statewide redistricting plans on behalf of voters of color in the state. Our MALDEF suit, now the lead case in several consolidated actions, challenges every redistricting plan adopted by the legislature and governor – congressional, state House, state Senate, and state Board of Education. Even though the Texas congressional delegation rose by two through reapportionment, the adopted plan reduces the number of Latino-majority congressional districts. The state House plan also reduces the number of Latino-majority districts. Each of the four challenged plans fails to create new Latino-majority districts even though the Latino community in Texas continues to grow at a faster rate than the remainder of the state population. Despite what is likely to be a significant undercount of Latinos in Texas, data from the 2020 Census shows that the Latino population grew at a higher rate (20.9 percent) than the non-Latino population (12.9 percent) in the state over the last decade. According to the 2020 Census, Latinos now comprise nearly 40 percent of the Texas population, so the pattern of retrogression of extant Latino-majority districts and of failure to create new Latino-majority districts is not reflective of the changing Texas population.

Yet, the delayed release of Census data used in redistricting to August 2021 and the fast-approaching deadlines for the Texas primary in March of this year means that the non-representative, retrogressive redistricting plans adopted in Texas will, with one possible exception, be used in the 2022 elections to choose Texas congressmembers, state legislators, and state board of education members. This would not be the case were a preclearance formula in place for this decade’s redistricting. Because of Texas’ recent, adjudicated history of intentional discrimination in voting, the state would be covered by a new geographic coverage formula. In addition, the size and rate of Latino population growth in the past decade would also have required submission of the state’s redistricting plan under the practice-based preclearance coverage formula in the John Lewis Act.
There is a similar story in Illinois where the state legislature and governor first enacted a redistricting plan using estimates from the American Community Survey (ACS) rather than wait for decennial Census data, with the result being grossly malapportioned districts. After MALDEF and others challenged these redistricted lines in court, the legislature redrew lines using Census data. The new lines reduced by two the number of Latino-majority districts in the state House and state Senate. In addition, the newly proposed lines failed to create seven compact Latino-majority state legislative districts that could have been drawn. In short, the adopted plans deprive the Latino community of a net total of five additional Latino-majority legislative seats. This outcome is not commensurate with population growth in the state of Illinois. Again despite a likely undercount of the Latino count, the 2020 Census showed that the Illinois Latino population increased by over 300,000 people in the last decade, for a growth rate of 15.3 percent. By contrast, the non-Latino population in Illinois actually decreased over the last decade by three percent.

As in Texas, the Illinois demographic story and the redistricting story do not match. The size of the Latino population, now over 18 percent of Illinois, and its growth rate over the last decade, would have subjected Illinois statewide redistricting to preclearance review under the practice-based coverage formula in the proposed John Lewis Act. The mere fact of coverage would likely have catalyzed different behavior in line-drawing by the powers-that-be in Illinois statewide politics. At MALDEF, we know that the Senate’s failure to act on the John Lewis Act has harmed Latino community rights in the redistricting process this decade.

To be clear, this voting rights issue is most decidedly not a partisan issue. The Texas redistricting process lay firmly in the hands of the Republican Party, while the Illinois process was controlled by the Democratic Party. Each of these states continues to allocate the power to redistrict to the state legislature, but even in states with redistricting commissions, we have seen violations of voting rights that operate to stem the growing and earned political power of the Latino community. In Washington state, a commission drew a Latino-majority legislative district in a portion of the state with significant Latino population growth. Indeed, as in so many other states, Latino population growth in Washington as a whole has outpaced non-Latino population growth. According to the 2020 Census, the Washington Latino population grew by 40.1 percent over the last decade, accounting for over 69 percent of the state’s total population growth.

The problem with the Latino-majority legislative district drawn by the commission is that turnout differences indicate that it will not likely elect candidates of choice of the Latino community. The commission had before it other configurations of a Latino-majority district in the same area that would perform to elect Latino-preferred candidates. This type of non-performing Latino-majority district would almost certainly have been prevented under a preclearance regime; the size and growth of the Latino community in Yakima County would have subjected the district to pre-review were the John Lewis Act in place. The benefit of the
pre-clearance would have benefited Washington as well as the Latino community. MALDEF joined other voting rights groups in filing VRA litigation yesterday to challenge the state. Defense expenses could have been avoided under the John Lewis Act because preclearance is a form of alternative dispute resolution (ADR) that saves resources and time compared to litigation under section 2 of the VRA.

The growth of the Latino community nationwide in the last decade, and the oft-perceived threat to those in power, will almost certainly result in additional violations of Latino voting rights through vote dilution as the redistricting process is completed at state and local level this year. In the end, we can expect that the nationwide costs – in rights violations and in the costs of litigation -- of this decennial process moving forward without the benefit of a preclearance regime will be substantial.

Political powers’ perception of a threat to their own incumbency in the growth of the Latino population, often manifested through redistricting, has a correlative in the “demographic fear” carried by many members of the general public – at bottom a concern that demographic change and the ascendance of non-white racial groups will change the fundamental familiarity of the United States and its national culture. More irresponsible political aspirants have exploited this demographic fear by engaging in dog-whistle and even more explicit political appeals to target members of specific racial minority groups in exclusionary public policies.

In the past year, we have seen dog-whistle politics again let loose in the voting arena through completely unsupported allegations of widespread voter fraud, often implicitly or even explicitly attributed to non-citizen, immigrant Latinos. Voter fraud allegations are intended to elicit demographic fear that the size and growth of the Latino community and other communities of color will result in negative change implemented through “un-American” political leaders elected by fraudulent voters. By affecting the right to vote of too many Americans, voter-fraud mythology is the most pernicious and irresponsible exploitation of demographic fear in our politics today. It should be recognized as such, rather than as some justification for deterring and preventing voter participation through draconian and discriminatory new state laws.

In the realm of voting, negative actions in response to the perceived threat of growing Latino political power have included attempts to render much more difficult voter participation by new, and increasingly Latino, eligible electoral participants. Examples lie in policies to impose new barriers to voter registration, only for new registrants, and to complicate the voting process by restricting alternative voting mechanisms – such as remote voting and ballot drop-off – and by permitting or facilitating the creation of intimidating features around the traditional in-person, election-day voting experience. Most recently, in a repeat of unlawful behavior challenged in court by MALDEF and others just a few years ago, the state of Texas has again
begun targeting voters that it knows or should know are naturalized for potential removal from the voter rolls as noncitizens.

Where these and other voting-related changes are motivated by a desire to limit the political power of a growing racial minority group, the changes stem from intentional racial discrimination; because intent constitutes a violation of the Constitution’s Fourteenth and Fifteenth Amendments, such changes are therefore unconstitutional. Federal laws, including an advanced VRA, are necessary to prevent the continuation of unconstitutional and anti-democratic policymaking in the states.

In general, race-based and race-motivated discrimination in voting coincides with an interest by those in power to delay or prevent political ascendance for growing minority groups. The size and continued growth of the Latino population in the United States as a whole, unprecedented in our national history, thus presents a particular challenge to those charged with protecting our democracy and the hallmark right to voter participation regardless of race or ethnicity.

Our changing nation faces significant challenges in the future with the growing presence of minority voters, and in particular the unprecedented growth of the Latino voting population. These significant changes present an opportunity to ensure that our democracy thrives based on real, core values of fairness and non-discrimination. Unfortunately, we have already seen a tendency among some political leaders, including the disgraced former president, Donald Trump, to resist those demographic changes through lies around election integrity that catalyze attempts at further race-targeted voter suppression. We can only hope to effectively counter these threats and to seize the opportunity to build a thriving democracy by exercising constitutional power to create a solid floor for a shared voting experience across our United States, through regulation of elections and through a reinvigorated preclearance process in the John Lewis Act.
Mr. COHEN. Thank you, sir. Our next Witness is Ms. Maureen Riordan. I welcome you back. You have been with us before. It is nice to have you back again. A litigation counsel for the Public Interest Legal Foundation which she joined in 2021, previously serving for 20 years as an attorney in the Civil Rights Division of the U.S. Department of Justice including as Senior Counsel, the Assistant Attorney General for Civil Rights during the Trump Administration. Ms. Riordan received her J.D. from St. Mary's University School of Law and her B.S. of Criminal Justice from Seton Hall.

Ms. Riordan, you are recognized for five minutes.

STATEMENT OF MAUREEN RIORDAN HENDERSON

Ms. RIORDAN. Good morning, Mr. Chair, Members of the Subcommittee, and Ranking Members. Thank you for your invitation to testify today.

For over 20 years, I served in the Civil Rights Division of the Department of Justice. Eighteen of those years were spent as a Voting Section Attorney and Senior Counsel. From August of 2000 until the Supreme Court's decision in *Shelby County v. Holder*, my sole responsibility was to review changes in voting that were submitted for section 5 preclearance.

In that decision by the Supreme Court, the Court made clear that only certain conditions would justify any formula for section 5 coverage today. Among the touchstones listed by the Court are blatant discriminatory evasions of Federal decrees, a lack of minority office-holding, tests and devices to vote, and voting discrimination that is both flagrant and rampant.

Simply put, such discrimination does not, in my opinion, exist today. As the Supreme Court stated: Federal intrusion into the powers that are reserved to the States must relate to empirical evidence. Triggers, such as many of those contained in these bills that are built around political and partisan goals, will never withstand constitutional scrutiny.

I come from a unique perspective because I did spend 20 years enforcing the Voting Rights Act. Unfortunately, I have learned some discouraging truths.

The section 2 which the John R. Lewis Voting Rights Bill would give power to is the Voting Section in the DOJ. I have to tell you that Voting Section is full of ideological, partisan bureaucrats. Employees display an open hostility to anyone who does not hold their leftist beliefs. The Inspector General’s report that I have attached to my written testimony provides many instances of bad behavior.

They have a disdain for the equal application of civil rights to all Americans. Furthermore, there is an accepted belief that certain States should be targeted by the Department in their voting rights enforcement. I have actually witnessed signs on attorneys’ doors that State, “Mess with Texas.” After the *Shelby County* decision extinguished the section 5 enforcement abilities, the company line within the section was the following:

> If we could just get a case of intentional discrimination by the State of Texas, we can request section 3(c) coverage, and that will be enough work to keep everybody busy.

The section has a long list of abuses by its lawyers for improper collaboration in reviewing section 5 submissions. If you want to
know how Georgia was targeted, one might look at the case of Johnson v. Miller. I have attached the opinion to my written testimony, and I encourage everyone to read it.

Here, the Court sanctioned Voting Section Attorneys in the amount of $594,000 for their egregious behavior in collusion with an attorney from the ACLU. The Department had twice refused to preclear a redistricting plan by the State of Georgia for congressional offices. After twice refusing to preclear that plan, they demanded that Georgia submit a plan containing minority representation that was far in excess of what is legally required or permissible. On the third attempt to get preclearance, the State of Georgia caved and actually accepted and put forward a plan that had been submitted by an ACLU attorney and recommended by the Department.

Unfortunately, for the State of Georgia, years later, the Federal Court found that the plan violated the 14th Amendment because it was drawn for race reasons only. Essentially, the State of Georgia was denied preclearance of its plan, until it was browbeaten by the Department of Justice to accept a plan that clearly violated the 14th Amendment.

There are permanent provisions of the Voting Rights Act, such as section 2, that prohibit discrimination and provide the DOJ with the ability to challenge election procedures. It is noted that, until this year, they have only brought four section 2 violations since the Shelby decision.

Lastly, these bills ban State photo IDs, despite overwhelming support from a clear majority of Americans. They require same-day registration; require recognition of coalition districts; limit a State's ability to verify eligibility and remove ineligible voters; require online voter registration and require automatic registration; require the restoration of felon voting rights, and taxpayer money to fund congressional candidates. These are just a few of the provisions.

These provisions accomplish three things:

1. The overturn several Supreme Court precedents.
2. They severely damage the integrity of our elections.
3. They impose unconstitutional mandates on the States.

Thank you.
[The statement of Ms. Riordan follows:]
Testimony Before the House of Representatives Judiciary Committee’s Subcommittee on the Constitution, Civil Rights, and Civil Liberties

January 20, 2022

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

I am an attorney with the Public Interest Legal Foundation, a non-partisan charity devoted to promoting election integrity and preserving the constitutional decentralization of power so that states may administer their own elections.

I have been an attorney for approximately 35 years. For over twenty years, I served in the Civil Rights Division of the Department of Justice. Eighteen of those years were spent both as a Voting Section attorney as well as Senior Counsel to the Attorney General for Civil Rights. From August 2000 until the Supreme Court’s decision in *Shelby v Holder*, my sole responsibility was to review changes in voting submitted for preclearance under Section 5. During my tenure at the Department, I have been the recipient of numerous awards.

If passed these bills will give tremendous power over the election procedures of every state and local election to partisan bureaucrats within the Voting Section. I watched this power abused firsthand. I would like share with you my experiences working in the Voting Section.

I began my employment in the Voting Section approximately 3 months prior to the 2000 election. When the Florida recount occurred, I personally observed Voting Section staff discussing strategies to assist DNC in Florida and receiving and sending faxes to Democratic National Committee and campaign operatives.
I also witnessed twisted racialism. When George W. Bush appointed Ralph Boyd, an African American, to head the Civil Rights Division, attorneys I often heard from career Voting Section attorneys “he’s not really black”, adding that “no self-respecting Black man would be a Republican. These statements were accepted beliefs by many staff.

I would urge every member here to read an DOJ Inspector General Report entitled “A Review of the Operation of the Voting Section of the Civil Rights Division.” It provides instance after instance of bad behavior – often racially motivated – among section staff. It includes abuse of an African American paralegal deemed not black enough. When you finish reading the report, you will rightfully wonder if it is such a good idea to give this office so much power over every election.1

But don’t just take the word of the DOJ Inspector General on this point, listen to what the Justice Department itself has said about the abuse of power. The Office of Legislative Affairs detailed in a letter to Representative Sensenbrenner the millions of dollars in sanctions the Voting Section has incurred for bad behavior in Section 5 reviews and other court cases. I have attached the letter to my testimony.

When the Voting Section brought an action against an African American named Ike Brown, in Noxubee County Mississippi, for violating the Voting Rights Act, I would urge every member here to read an DOJ Inspector General Report entitled “A Review of the Operation of the Voting Section of the Civil Rights Division.” It provides instance after instance of bad behavior – often racially motivated – among section staff. It includes abuse of an African American paralegal deemed not black enough. When you finish reading the report, you will rightfully wonder if it is such a good idea to give this office so much power over every election.1

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these partisan bureaucrats disagreed with the filing of the case and were hostile to it throughout the prosecution of the case. They have disdain for the equal application of civil rights laws to all Americans. Furthermore, there is an accepted belief that certain States should be targeted by DOJ in their voting rights enforcement. I have witnessed signs that state “mess with Texas”. After the Shelby County decision extinguished Section 5 enforcement by DOJ, the company line was “If we can just get a case against Texas, we can request Section 3 coverage and it’s big enough to provide enough work to keep everyone busy, we won’t need Section 5”.

**Past Abuse of Section 5 Powers**

The Voting Section has a long record of abuse by its lawyers, for improper collaboration in reviewing Section 5 submissions, and has been sanctioned by courts.

Between 1993 and 2000, the Voting Section has been sanctioned $2,358,687.31 If you want to know what will happen should States be required to submit a redistricting plan pursuant to the proposed practiced based portion of the Lewis Bill, one only need to look to the case of *Johnson v. Miller* (864 F. Supp. 1354, 1364 (S.D. Ga. 1994)), (attached) where the United States District Court sanctioned the Voting Section $594,000 for collusive misconduct by DOJ Voting Section lawyers. That case originated with the State of Georgia’s submission of its Congressional redistricting plan to the DOJ for Section 5 Preclearance. In its previous decennial districting plan the State of Georgia had 10 congressional Districts and one majority black district. Based upon
the new census data the proposed plan called for 11 districts and the proposed plan contained two majority black districts. The proposed plan increased the voting strength of African Americans in Georgia. Despite that, the DOJ working in coordination with an attorney from the ACLU refused to clear the Georgia plan. Furthermore, DOJ demanded that the State devise a plan that “maxxed” the black representation in the State. The State of Georgia had to submit the redistricting plan three times before it received preclearance. In its final submission the State of Georgia caved to DOJ and essentially adopted the plan put forward by the ACLU attorney. However, the plan was ultimately struck down because it violated the 14th Amendment because it was strictly race based focused. In its decision striking down the plan the court noted that the ACLU was “in constant contact with the DOJ line attorneys” during the preclearance process. Pronouncing the communications between the DOJ and the ACLU “disturbing,” the court declared, “It is obvious from a review of the materials that [the ACLU attorneys’] relationship with the DOJ Voting Section was informal and familiar, the dynamics were that of peers working together, not of an advocate submitting proposals to higher authorities.” After a Voting Section lawyer professed that she could not remember details about the relationship, the court found her “professed amnesia” to be “less than credible.” Abuse of power in the Section 5 process is not confined to Johnson v. Miller. Yet even after the imposition of these sanctions, on more than one occasion after receiving a submission to review for preclearance, I was instructed to strategize
with these very same advocacy groups. By providing a private cause of action for alleged violations of the Act, you will encourage even more collusion by DOJ and other groups. One only has to look at the Georgia and Texas litigation to see it in operation.

Funny though, who was the last one into the litigation fray? The Department of Justice. Such unethical behavior has cost federal taxpayers too. Department of Justice has paid 2,358,687.31 in sanctions for improper actions. (Please letter dated 2006 to Sen. Sensenbrenner letter detailing Voting Section abuses attached as Exhibit C)

A 2009 objection in Kinston, North Carolina, shows the outrageous, abusive and legally indefensible positions the Voting Section will adopt using Section 5. Kinston, a majority black jurisdiction, in a referendum decided to dump partisan elections for town office and move to nonpartisan elections. The Voting Section, required that Kinston prove that this change, supported by African American elected officials was not adopted with a discriminatory purpose or that it had a discriminatory effect. The logic of the Section 5 objection was that if black voters did not have the word Democrat next to candidate names, they would not know for whom to vote. (Objection letter attached as EXH. B)

During a review of a statewide redistricting plan, I personally became aware of a demand made by the Front office to target the district of a white state legislator. The legislator represented a district with a large African American population. What did this State Senator do to incur the wrath of the Front office? He sponsored local
legislation in response to requests from his minority constituents to bring accountability to a local school board. The School Board was under investigation for misuse of funds and firing 9 of the last 10 Superintendents. The local legislation was submitted for preclearance. Unfortunately for the parents of the minority students the Front office backed the school board, and then sought to punish the local legislator.

Town of North, South Carolina, submitted an annexation of two white homeowners to the city limits for preclearance. The white homeowners had requested annexation to the Town to obtain water and sewer. The Department objected to the annexation, because the Town could not show that any African Americans had been annexed, despite their never having submitted a qualifying request for annexation. Furthermore, Congress actually relied on some of these meritless objections when it reauthorized Section 5 in 2006. These abusive and meritless objections polluted the record in 2006, but no plaintiff ever challenged them, and Congress took no testimony regarding their merits. Additionally, these and other cases brought by the Voting Section have resulted in the Department of Justice paying 2,358,687.31 in sanctions for improper actions. (Please letter dated 2006 to Sen. Sensenbrenner letter detailing Voting Section abuses attached as Exhibit C)

**Every change no matter how small**

The John Lewis Voting Rights Bill’s practice-based preclearance triggers will require most electoral change to be submitted for preclearance, no matter how
inconsequential the change may be. For example, a polling place change does not just include a change in physical address. It includes ANY change to the polling place. If a polling place moved from the school gym to the school cafeteria, the lawyers in the Voting Section would have to review and approve or reject the change. Voter registration changes include office hour openings from 8:30 to 8:25 would have to be approved. Any change in a polling place signage font would have to be approved. Any change in location of Registrar from old city hall to new city hall literally across the street, and changes in the numbering of precinct numbers that do not affect location, all of these would have to be approved.

Additionally, every local town annexation must be submitted and approved. These types of changes represent the majority of those reviewed. The Attorney General does not have the burden of establishing a discriminatory purpose or effect to issue an Objection under Section 5. The burden is on the jurisdiction submitting the change to prove that the proposed change does not have a discriminatory purpose or discriminatory effect.

**Preelection is not necessary in 2021**

Section 5 was a temporary provision for a reason that no longer exists. The Supreme Court made clear in *Shelby* that only certain conditions would justify any formula for Section 5 coverage today. Among the touchstones listed by the Court are “blatantly discriminatory evasions of federal decrees,” lack of minority office holding,
tests and devices, “voting discrimination ‘on a pervasive scale,” “flagrant” voting discrimination, or “rampant” voting discrimination. Such discrimination does not exist today. Indeed, this Committee could look long and hard and not find a single evasion of a federal decree – the central assumption of why preclearance was needed in 1965. As the Supreme Court stated “Federal intrusion into the powers reserved by the Constitution to the States must relate to these empirical circumstances. Triggers that are built around political or partisan goals will not withstand Constitutional scrutiny.

According to information received from the DOJ through a FOIA request, from 2000 through 2013, the Voting Section received and reviewed 222,132 submissions and issued 81 objections. That means that only .036 of 1 percent of the submissions reviewed resulted in an objection. Do you think that number represents massive, blatant discrimination?

Tools Exist to Stop Discrimination

Permanent provisions of the Voting Rights Act such as Section 2 still prohibit discrimination and provide the Justice Department with the ability to challenge election procedures.

Language minority provisions such as Section 203 and Section 4 (3) were not affected by the Shelby decision.

Section 3(c) the “bail in provision”, allows a judge to order a state or subdivision to submit to the preclearance provisions, if it finds that the jurisdiction intentionally
discriminated against minority voters. It is also consistent with the Shelby mandate that federal oversight of state or local elections be closely matched by need. However, these bills would also allow a jurisdiction to be subjected to the rigors of Section 3 © for violations of these bills, violations of Section 5, or when a jurisdiction has agreed to settle a case through a consent decree. None of the new allowable triggers require a showing of intentional discrimination, and are inconsistent with permissible federal as outlined in the Shelby decision.

Lastly, but of great importance is Section 11(b), which prohibits intimidation, threats, or coercion directed towards voters or those aiding voters. This section is also available post Shelby, yet there has not been a case brought by the Department through 11(b) since the case against the New Black Panther Party in 2009.

Lastly, these bills ban state photo ID laws, require same day registration, limit a state’s ability to verify eligibility and remove ineligible voters, require online voter registration, require automatic registration, require the restoration of felon voting rights, use taxpayer money to fund congressional candidates, require drop boxes for absentee ballots without security and force ballot trafficking upon the states, and lastly limit political speech. The only thing that these provisions accomplish is to severely damage the integrity of our elections and impose unconstitutional mandates on the states.

Thank you for your time and attention.
Mr. COHEN. Thank you, Ms. Riordan.

Our next Witness is Mr. T. Russell Nobile. If I mispronounced that, help me. He is Senior Attorney for Judicial Watch. From 2005–2012, he served as trial attorney in the Civil Rights Division of the U.S. Department of Justice, including five years in the Division's Voting Section. Also, previously, he was a Legislative Assistant to a Member of the House Financial Services Committee. He received his J.D. from the Mississippi College School of Law and his B.A. from the University of Mississippi. He served as a law clerk to the Supreme Court of Mississippi.

Mr. Nobile, please, you are recognized for five minutes.

STATEMENT OF T. RUSSELL NOBILE

Mr. NOBILE. Thank you. Good morning, Chair Cohen and Ranking Member Roy, and other Members of the Subcommittee. It is an honor to be back before the Subcommittee.

In 2008, the Supreme Court upheld the constitutionality of voting ID. Following that rule, there was a rush by advocacy groups alleging rampant illegal voter suppression. The nature of those claims varied, but they usually involved allegations that common-sense election regulations such as voter ID and longstanding time, place, and manner regulations disenfranchised minority voters. Such allegations gained new intensity after the Supreme Court's 2013 Shelby County rule. Following that, many advocates revised their approach, claiming that alleged voter suppression could only be stopped if Congress would pass new legislation that abandons 233 years of constitutional tradition and have the Federal government, rather than the States, assume control over elections nationwide.

In an attempt to rally support for this new legislation, its proponents have described a near dystopian-like world in which minorities have no right to vote, and even going so far as to coin the term “Jim Crow 2.0” to describe disfavored State election regulation. More recently, they have smeared people that don't support Federal takeover of elections as long-lost supporters of Jefferson Davis, George Wallace, and Bull Connor.

Everyone here knows what Jim Crow involved. It was Statesponsored oppression of American citizens and in many instances much worse. It is a uniquely dark period in our nation’s history with few parallels. For that reason, it is mystifying that some allegedly serious advocates would smear reasonable, common-sense election regulations as Jim Crow 2.0. Such comments suggest the speaker neither understands Jim Crow nor election regulation. Jim Crow is not a brand, and it is not a software update. It is a dark period in our history that is being invoked right now to inflame passions and to create fear in minority communities.

As testified before this Committee in July of last year, minority registration and turnout, not hyperbolic soundbites, tell the true story of ballot access in the United States. Recent data shows that racial disparities in voting have been dramatically reduced, in many cases eliminated. This progress is something we should be proud of. Yet, proponents of federalizing elections rarely mention it.

The fact is that the minority participation during the 2020 elections was exponentially higher nationwide than it was during the
actual Jim Crow period in 1965. For example, take Tennessee, Chair Cohen’s home State. Black registration and turnout in Tennessee in 2020 exceeded that for Whites. That is hardly Jim Crow.

The same is true just downriver in Mississippi. Previously, Jim Crow Mississippi had an astonishingly low, 64 percent registration rate for Blacks. Ballot access has actually improved over the last 15 years, despite relentless voter suppression claims. Minority registration and turnout has increased, and racial disparities have decreased.

The reality is that it is simply impossible for anyone to reconcile current claims of large-scale voter suppression with ballot access statistics. Moreover, despite the near ceaseless claims of voter suppression over this time period, there is woefully inadequate popular support in favor of a Federal takeover of elections. Indeed, it is hard to find alleged support for federalizing elections to be overseen by Federal agencies akin to the CDC, the IRS, the Postal Service, or even the DOJ.

The improvements in ballot access statistics over the last 15 years occurred, even while numerous States implemented allegedly suppressive voter ID policies. In fact, concerns about allegedly suppressive voter ID policies have failed so spectacularly that voter ID now enjoys near universal national support, with recent polling estimating 80 percent of Americans support it.

There is an undeniable disconnect between today’s voter suppression narrative and reality, which explains why there is inadequate popular support for federalizing elections. Until this is resolved, the John Lewis Act and the Freedom to Vote Act will remain remedies in search of a problem. Thank you very much for the invitation to testify today, and I look forward to answering your questions.

[The statement of Mr. Nobile follows:]
Good afternoon, Chairman Cohen, Ranking Member Roy, and Members of the Subcommittee. Thank you for the invitation to speak with you today.

My name is Russell Nobile. I am a Senior Attorney at Judicial Watch Inc. and part of its election integrity group. Judicial Watch is the largest conservative public interest group in the United States. It is 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 17 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, 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”), the 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 career 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 of the VRA and Title I of the Civil Rights Act of 1964. The Department’s website shows that the Waller County case was one of the last Section 5 cases it brought before the U.S. Supreme Court invalidated further use of the triggering mechanism for Section 5 in *Shelby County*, 570 U.S. 529, 546 (2013). 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.

In 2012, I went into private practice, where I continued handling civil rights and voting cases. 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.

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I. Section 5 of the VRA and Shelby County

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 black voters. Elections and popular support were driven by racial concerns, rather than ideas. Because of this discrimination, elections did not accurately reflect popular support in those jurisdictions. The registration data from that time showed just how much the system was failing. Before the enactment of the VRA, only 19.4 percent of black citizens of voting age were registered to vote in Alabama, 31.8 percent in Louisiana, and a remarkably low 6.4 percent in Mississippi. See Shelby County, 570 U.S. at 546. These figures reflected a roughly 50 percent or greater disparity between the registration rates of black and white voters. Id.

These disparities in registration led Congress to enact the Voting Rights Act of 1965, which was comprised of permanent statutes banning discrimination as well as 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. Section 5 presumed all voting changes by a covered jurisdiction were unlawful (i.e., implemented out of
discriminatory intent or effect) until the jurisdiction proved otherwise. The Supreme Court ruled that this statutory presumption of guilt before trial on the merits was justified in the context of the shockingly low level of black voter registration and turnout in 1965.

While it was originally enacted as a temporary provision set to expire after five years, Congress extended Section 5 for the next 66 years using virtually the same coverage formula Congress adopted in 1965. The Supreme Court’s rejection of this formula in Shelby County does not mean that intentional or effect-based discrimination in voting is legal. 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 discriminatory election standards, practices, or procedures.

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 drive-by reporting of “rampant voter suppression” occurring nationwide. 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 eight Section 2 cases since the Shelby County decision, two of which were a replacement for the Section 5 redistricting cases against Texas, which were vacated following the Shelby County decision.4 Since the start of the Obama administration in

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2008, the Justice Department has filed only thirteen Section 2 enforcement cases.5 This data shows the Attorney General is currently capable of enforcing voter protections on a case-by-case basis and that he does not need new authority to combat “rampant voter suppression.”

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 likes or talking points, 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 2022, 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 tells the true story of ballot access in America. To objectively evaluate 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 minority participation is exponentially higher 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.

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) available at https://www.census.gov/data/tables/time-series/demo/voting-and-registration/p20-585.html (last visited January 19, 2022).
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. 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 racial groups. 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 disparities in these former Section 5 states. Again, turnout for black voters in Mississippi exceeded that of whites.

There is a significant disconnect between this ballot access data and public claims of widespread voter suppression. Notwithstanding pervasive talking points about “rampant voter suppression,” the public data cannot be ignored: registration and turnout for minority

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voters in 2020 far exceeds that of 1965. When black citizens now register and turnout at higher rates than white citizens in places like Mississippi, it is simply not credible to claim that Jim Crow style voter suppression currently exists.\(^8\)

II. **H.R. 4 and Americans’ Longstanding Distrust of Centrally Controlled Elections**

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 appears part of a grander plan to wrest control of American elections away from accountable state legislatures and into the hands of a single federal agency. It does this despite Americans’ longstanding distrust of centralized administration of elections. Twice the U.S. Constitution mandated that presidential electors meet and cast their votes for president in their respective states, rather than at a central location, because in doing so there “would be less opportunity for political intrigue and chicanery than if they assembled in a single location.”\(^9\) U.S. Constitution, Article II, Section 1; 12th Amendment. “In order to forestall partisan intrigue and manipulation, each state’s electors were required to assemble separately in their respective states to cast their ballots rather than meet as a body in a single location.” *Id.*; see also *The Federalist* No. 68 (Alexander Hamilton). Rather than decentralized...

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election administration, which isolates by state possible intrigue and manipulation, H.R. 4 assigns oversight of America’s elections to a federal agency with a well-documented history of partisanship.

A. There Is No Data Supporting The New Practice-Based Nationwide Section 5 Coverage

H.R. 4 proposes a nationwide coverage provision that did not exist in the VRA before the Shelby County decision that will vastly expand the federal government’s control over federal, state, and local elections. It creates a “practice-based preclearance” requirement that would apply to every jurisdiction in the country, regardless of its history of discrimination or racial disparities. Whatever the claims in support of this new practice-based coverage, there is no data that supports using Congress’ Fourteenth and Fifteenth Amendment powers to take over, for example, all municipal annexations and poll site changes nationwide. If 1965 voting disparities do not support nationwide coverage, current registration and turnout data certainly does not support imposing a new nationwide coverage today. To the extent that H.R. 4 purports to enforce the guarantees of the Fourteenth Amendment, it is constitutionally required that “[t]here must be a congruence and proportionality between the injury to be prevented or remedied and the means adopted to that end.” City of Boerne v. Flores, 521 U.S. 507, 520 (1997). The record and data do not support the claim that voting rights are somehow in peril, nor can they justify a nationwide, federal takeover of states’ electoral processes.

H.R. 4’s new nationwide coverage applies to seven practices: 1) method of elections, 2) annexations, 3) redistricting, 4) voter documentation and qualifications, 5)
bilingual materials, 6) poll site changes, and 7) state list maintenance practices. Each one of these new coverages raises more questions than answers, such as what existing conditions support using Congress’ Fourteenth and Fifteenth Amendment powers to require federal approval of traditional state activities.

Beyond looking at the data, Congress needs to look at the practical reality related to the Department of Justice’s ability to enforce the VRA on a case-by-case basis. In Katzenbach, the Supreme Court emphasized that Congress reviewed the Department’s ability to enforce black voting rights before making a factual determination that “case-by-case litigation [by the Department of Justice is] inadequate to combat widespread and persistent discrimination in voting[.]” While that was true in 1965, it is no longer the case. Looking at the Department’s own enforcement data since 2010, it is hard to contend that it cannot enforce the VRA’s protections on a case-by-case basis.

For over five decades, the Department has used Section 2 to challenge discriminatory annexations and methods of elections. Because jurisdictions change their method of elections and boundaries infrequently, the universe of colorable VRA claims that may arise from such changes is small. Even accounting for this, the number of recent enforcement actions involving such changes is strikingly small. Since 2010, the Department has brought only three Section 2 cases challenging methods of elections and zero annexation cases.10 Of the three cases mentioned, one settled the day the complaint

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was filed and the other settled within three weeks, which shows these cases required only limited Department resources.\textsuperscript{11}

Redistricting certainly occurs more frequently than changes to methods of election and annexations. Yet the Department has brought even fewer redistricting cases since 2010. In fact, during the last redistricting cycle, the Department brought only two Section 2 cases, both against Texas in 2013.\textsuperscript{12} Over the last 12 years, the Department has brought a combined total of six cases challenging methods of election, annexations, and redistricting plans. This current caseload volume is dramatically lower than the caseload facing the Department when it began enforcing the VRA in 1965. It shows the Department is fully capable of handling redistricting claims on a case-by-case basis.

H.R. 4’s new practice-based coverage also requires federal review of all poll site changes nationwide as well as the text and translation for all bilingual materials distributed by each individual jurisdiction. In practice, bilingual materials often need to be revised every election cycle. Accordingly, this coverage may result in requiring the Department or the U.S. District Court to review hundreds of thousands of pages of translated documents. Again, the Department’s website tells the true story regarding the need for nationwide coverage and its ability to protect voting rights related poll sites and language minorities on a case-by-case basis. Since 2010 the Department has brought zero lawsuits over poll site changes. Similarly, since 2010 it has brought only eight cases under the


\textsuperscript{12} See note 4, supra.
language minority provisions of the Voting Rights Act, all of which were settled, conserving Departmental resources. Such a caseload hardly supports a federal nationwide takeover as proposed for these covered practices. The language minority enforcement staff in the Department are certainly capable of handling the current rate of cases. If H.R. 4’s practice-based coverage is enacted, however, the Department will most assuredly need more resources to timely review all poll site changes or bilingual materials from across the nation.

As originally filed, H.R. 4’s nationwide coverage targets wildly popular state requirements that voters show some form of identification when voting. Since then, new polling shows that 80% of Americans support requiring voters to show photo identification in order to cast a ballot. Only 18% oppose this requirement. Voter ID laws are promulgated at the state level, making it hard to claim that the Department cannot handle such claims on a case-by-case basis. Since 2010, the Department has only brought one Section 2 case challenging state voter ID provisions. Again, the record shows the Department is capable of prosecuting voter ID enforcement actions on a case-by-case basis without the nationwide federal takeover proposed in H.R. 4.

B. H.R. 4 Gives the Federal Government Powers That Go Far Beyond Voting

H.R. 4 grants the Attorney General authority to enjoin “any act prohibited by the 14th or 15th Amendment” of the Constitution. This little-noticed provision will abolish

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14 Sec. 7(a) of H.R. 4.
a 153-year-old legal principle that limits the Attorney General’s jurisdiction over Fourteenth Amendment disputes between states and private individuals. It opens the door to highly contentious litigation between states and the Attorney General. It is difficult to overstate the risk that this new law poses to the Department. The Congress should end this unprecedented effort to inject the 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 Department does not. This proposed change is a major shift, allowing the Justice Department to become involved in a whole range of Fourteenth Amendment cases that previously it would have been unable to pursue. What is more alarming is that the new powers included in H.R. 4 are not limited to voting rights. Whether intentionally or unintentionally, as written, the Attorney General will be allowed to bring any action under the Fourteenth Amendment, which could include actions to promote (or restrict) gun rights, religious liberties, and abortion rights. The opportunity for any administration, Republican or Democratic, to exploit this new law is significant. 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.

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C. H.R. 4’s Trigger Formula For Traditional Section 5 Coverage

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 incentive it creates. H.R. 4 defines “voting rights violations” broadly, capturing minor settlements that never resolved the merits of any claims. This definition actually 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 both defensive and affirmative civil rights litigation, I can say firsthand that discouraging settlement is counterproductive to civil rights enforcement.

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 (i.e., richest) 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” even trivial claims, before running to the Justice Department to claim their settlement triggered Section 5 coverage. Such incentives 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 such problems by replacing the data-based approach for Section 5 coverage with a new, easily corruptible process that rewards litigious and
collusive 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 the Section 5 process discouraged jurisdictions from making good faith improvements to their voting laws. We may disagree on the degree, but any time costs and regulations increase, it discourages the targeted behavior – in this case, even non-discriminatory changes to elections practices. 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 a change was made post-*Shelby County* does not mean that it was racially motivated.

III. Civil Rights Division

Under H.R. 4, the Department of Justice’s Voting Section will have significantly enhanced responsibilities. The Voting Section of the Justice Department has in the past proved to be a hotbed of partisanship. Even within the most political town in the country, the culture of the Voting Section stands out for its partisanship. An Inspector General’s report from March 2013 described the harassment of conservative and Republican employees and race-based enforcement of the Voting Rights Act. There has been recent debate over the use of Critical Race Theory (“CRT”). From my observations, there are few places in the federal government that are more partisan or dominated by the
assumptions that underlie CRT than the Civil Rights Division. The partisanship and hostility towards conservative staff that do not hold the same CRT assumptions is startling. Section staff knew how to identify other staffers who do not hold CRT-like views. While some maintained professional decorum, others showed a troubling level of intolerance to those they disagreed with and, in some cases, actively harassed them, as recounted in the OIG report. 16 I personally witnessed many of the episodes chronicled in the OIG report and several that were not.

IV. Brnovich v. DNC

A. Vote Denial Under Section 2 Prior to Brnovich

Prior to Brnovich, courts adopted basically two approaches in resolving vote denial claims under Section 2. The difference between these approaches ultimately led to a significant split between circuits, and even between different panels of the same circuit. A clear majority of courts and circuits required “proof that the challenged standard or practice causally contributes to the alleged discriminatory impact by affording protected group members less opportunity to participate.” 17 A second approach, however, did not require


plaintiffs to establish that a challenged procedure itself particularly caused the loss of opportunity proscribed by Section 2, but only that a challenged procedure “affects minorities disparately because it interacts with social and historical conditions that have produced discrimination against minorities currently, in the past, or both.” In other words, under this second approach, (1) disparate impact, plus (2) general, Senate Factor evidence establishes a violation of Section 2’s “results” standard.

B. The Decision in Brnovich

In Brnovich, the Supreme Court resolved this split and outlined for the first time a framework for how challenges to state time, place, and manner regulations (“TMP regulations”) are handled under Section 2. The ruling did not depart from the text of Section 2, as some have claimed. In fact, I see the Brnovich decision as providing long-needed guidance regarding how Section 2’s “totality of circumstances” analysis applies to vote denial challenges to TMP regulations. Indeed, if the Court had issued the ruling in a less contentious political atmosphere, as far back as ten years ago, Brnovich would have been unremarkable.

To put the impact of Brnovich in context, a brief overview of Section 2 is useful. The text of Section 2 allows two types of claims: intent-based and results-based claims.

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Section 2 cases can be further categorized as either vote dilution cases, challenging the system of election itself, or vote denial cases, challenging particular administrative requirements. The distinction between dilution and denial cases is often overlooked. One of the most significant aspects of the Brnovich ruling is that it firmly established that these categories require different analyses. Since its enactment in 1965, Section 2 enforcement has largely involved dilution claims. Brnovich does not alter Section 2’s vote dilution analysis. Aside from redistricting, jurisdictions rarely alter their methods of elections. Thus, vote dilution claims are not a growth area for Section 2 litigation. In fact, many jurisdictions nationwide have already either been investigated for, or subject to, a Section 2 claim, while many others proactively modified their method of elections to avoid such suits. As a result, vote dilution claims have been in secular decline. This should be a source of national pride. Many advocacy groups, however, have shifted their focus and resources to vote denial claims targeting race-neutral TPM regulations. A great many Section 2 lawsuits were commenced in recent years challenging ordinary seeming regulations – and changes to such regulations – governing, for example, the use of absentee ballots, in-precinct voting, early voting, voter ID laws, election observers, same-day registration, durational residency requirements, and straight-ticket voting. Attacks on these longstanding regulations are facilitated by utilizing the assumptions inherent in

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20 This fact is cemented by Congress’ decision in 1982 to add a proviso at the end of Section 2 that expressly refutes any belief that its protections entitled protected classes to proportional representation.

Critical Race Theory, which postulates that existing institutions and regulations are designed to reinforce current racial, ethnic, and gender hierarchies, in order to establish the necessary “social and historical conditions that have produced discrimination.” These new types of denial claims often depend on statistics that artificially amplify alleged burdens caused by targeted regulations.

Brnovich addresses how result-based vote denial cases are handled under Section 2. The Court provided a list of five “relevant circumstances” (i.e., extent of any burden, departure from a historical benchmark, the significance of any disparity, other opportunities to register and vote, and the strength of the state’s interest) that can be used by courts to evaluate denial cases. Most of these “relevant circumstances” are common considerations any voting lawyer would review in preparing a Section 2 case. The Court made clear that it was providing a non-exhaustive list of considerations, leaving the door open for future litigants to raise any other circumstances they contend are important to their Section 2 claims. The Court then addressed which dilution considerations were useful for analyzing denial claims. In particular, the Court addressed the preconditions and Senate factors set forth in the seminal vote dilution case of Thornburg v. Gingles and discussed how, if at all, these applied to denial cases. The tools used to consider whether an at-large election system dilutes minority votes are often of little probative value in determining whether a TPM regulation denies or abridges someone’s right to vote. The Court, however, did note that considerations such as past discrimination and lingering effects of past discrimination were relevant to a denial claim. None of Brnovich should surprise a practitioner familiar with the traditional Senate Factors. In fact, very little in Brnovich is
new. Vote denial raises different issues than vote dilution. Dilution-based analysis is often completely irrelevant to denial claims.

Thank you very much for inviting me to testify today. I look forward to answering your questions.
Mr. COHEN. Thank you. I do remember you from our previous hearings. Would you remind me how you pronounce your name?
Mr. NOBILE. Yes. It is Nobile.
Mr. COHEN. Nobile?
Mr. NOBILE. Like Mobile, Alabama, with an “N.”
Mr. COHEN. Mobile, Nobile. Nobile. I got you. Thank you, Mr. Nobile.

Somebody has noticed that I moved my chair. I did that for a purpose. Mr. Henderson will understand why, I guess. I am underneath Everett Dirksen, who looks a bit frazzled and upset, and that is the way he would be today. Senator Dirksen, who led the cloture fight in 1964 to pass the civil rights bill—the first time a cloture vote had ever succeeded on a civil rights act—he was a Republican, the Republican Minority Leader, and he was a sponsor, the prime sponsor, of the 1965 voting rights law that passed, as did the civil rights bill, with more Republican percentage votes than Democratic votes. The only no votes on those bills were the Southerners who resisted change forever. Everett Dirksen, a great Senator back in the day when Republicans were true to their original founding and had always been for civil rights.

Now, I would like to recognize Mr. Derrick Johnson. He is the President and CEO of the NAACP, a position he has held since October of 2017. He previously served as Vice Chair of the NAACP National Board of Directors and is President of the NAACP Mississippi State Conference.

Mr. Johnson received his J.D. from South Texas College of Law; his undergraduate school degree from Tougaloo College in Jackson, Mississippi. I think Benny Thompson might have gone there, but I know Lenal Anderson did, a man I know in Memphis who just passed away and a fine lawyer.

Mr. Johnson, you are recognized for five minutes.

Mr. Johnson, you might need to turn on your microphone.

STATEMENT OF DERRICK JOHNSON

Mr. JOHNSON. That is important. You can hear me now?
Mr. COHEN. That is exactly right. Thank you.
Mr. JOHNSON. Good morning, Chair Nadler and Cohen and Ranking Members Jordan and Johnson, and Subcommittee Members.

Thank you for the invitation to testify about concerted efforts to disenfranchise Black Americans and the need to pass the Freedom to Vote: John R. Lewis Act.

I ask permission to include my full statement in the record.

I am proud to be with you today representing the nation’s oldest and largest civil rights organization. I am here to speak for Members and activists of the NAACP across the country. I am also speaking to you as a proud adopted son of the State of Mississippi. Mississippi has been my home for the past 30 years. I live and work in the heart of the State where so many battles for civil rights were fought.

It was in Mississippi where Medgar Evers, my predecessor, served at the State Conference and gave his life for the cause of voting rights. It was in Mississippi where righteous people of all
races, religions, and creeds converged 58 years ago to register voters during Freedom Summer. Among them were individuals such as Hollis Watkins and Euvester Simpson, who worked closely with Fannie Lou Hamer.

It was in Mississippi where some of those heroes were summarily executed by White supremacists for the crime of registering Black votes. Their sacrifice made this country a more perfect union. The danger they struggled against never fully disappeared. Instead, it festered under the surface, and it is now spilling back out in a toxic soup of White supremacists.

We are now facing an all-out attack on Black voters by a former president, State governors, Federal and State legislators, with complicity of the Supreme Court majority that has abandoned its duty to uphold the Constitution to protect Black citizens’ right to vote.

We saw this right here in Mississippi where the NAACP documented an alarming degree of voter suppression in 2020. For example, polling places in Black neighborhoods throughout the State endured an increased and a very visible police presence. Black voters were purged from voting rolls and forced to vote provisionally without any certainty that their vote would eventually be counted. Late openings, equipment problems, long lines in predominantly Black neighborhoods forced many voters to choose between their paycheck and their vote, as a result of waiting an exorbitant amount of time to cast their ballot. This wasn’t limited to Mississippi; this was repeated in many States across the country, North and South.

As serious as these problems were, we now know that 2020 was just a dress rehearsal for the upcoming elections. The new Jim Crow generation has ramped up its efforts to suppress the political power of Black Americans to a new level with tools and tactics their predecessors could only dream of. We are looking at new lyrics, but the same old song.

Even if we can find a way to overcome the obstacles they are constructing, they are creating a coordinated framework to assure that ballots, once cast, are not counted and will not count. The Freedom to Vote: John R. Lewis Act will go a long way towards disrupting this effort to disenfranchise Black voters. The NAACP has never backed down from working for equality and justice, and we will not back down now, along with our partners.

We can’t do it alone. We need Congress to join us, to hold true to your constitutional duty to protect our vote. Earlier this week, we marked Dr. King’s birthday, and we watched numerous politicians quote Dr. King and embrace his life and legacy. I will say to all of you that words are nice, but, in the end, it is your actions that matter and that you will be remembered for.

The actions we need from you now is to stand on the right side of history and pass the Freedom to Vote: John R. Lewis Act. It is so important to understand that what we Witnessed last night isn’t the end because the Voting Rights Act, originally, it took three attempts to finally pass.

Thank you for this opportunity to testify before you today, and I will be happy to take your questions.

[The statement of Mr. Johnson follows:]
Good morning, Chairman Cohen and Ranking Member Johnson. Chairman Cohen, thank you for the invitation to testify on the timely and most important topic of voting rights, the rising threat of voter suppression and disenfranchisement Black Americans are facing and the need to pass The Freedom to Vote: John R. Lewis Act.

I am proud to be with you today representing the nation’s oldest and largest civil rights organization. I am here to speak for members and activists of the NAACP across the country. I am also speaking to you as the inheritor of the NAACP’s legacy of leadership and as a proud adopted son of the state of Mississippi.

Mississippi has been my home for the past 30 years. Living and working in the heart of the state where so many battles for civil rights were fought, walking the grounds stained with the blood of martyrs who fought for the voting rights we are desperately trying to save today, has helped to shape my vision and fortified my strength for this battle.

It was in Mississippi where the NAACP’s Field Secretary Medgar Evers, my predecessor, was shot in the back in his driveway as his wife and children watched in helpless horror.

It was in Mississippi where righteous people of all races, religions and creeds converged 58 years ago to register voters during “Freedom Summer.” Among them were my mentors Euvester Simpson and Hollis Watkins who worked closely with Fannie Lou Hamer.

It was in Mississippi where some of those heroes were summarily executed by white supremacists for the “crime” of registering Black voters.

We’ve seen many gains since then, including the 1965 Voting Rights Act and the election of Black and brown representatives, mayors, governors and even President and Vice President.
But despite those gains – and maybe BECAUSE of them – that fight continues as we have had to protect ourselves from those who would strip us of our rights, deny us our power, demean and demoralize us in order to subjugate us on the altar of white supremacy. That danger may have ebbed and flowed, moving in and out of our public consciousness over the years, but it never disappeared. Instead, it festered under the surface and is now spilling back out in a toxic soup of white supremacy backed by powerful political forces.

We are now facing an all-out attack on Black voters by a former president, state governors, and federal and state legislators, with the complicity of a Supreme Court majority that abandoned its duty to uphold the Constitution and protect Black citizens’ right to vote.

There is a myth that this suppression has been limited to the South, to Mississippi, Alabama, Georgia, Texas and other former Confederate states. But that poison has seeped into and is threatening to choke off democracy in many other states across the country.

We saw this with the relentless attacks on the 1965 Voting Rights Act that led to the U.S. Supreme Court eviscerating its key provisions, opening the floodgates of voter suppression at levels unseen in nearly 60 years.

We saw this in 2020 in the massive and elaborate efforts to interfere with the ability of Black voters to cast ballots and to have those ballots counted.

We saw this when the U.S. Postmaster General impeded the timely distribution of mail, implemented crippling policies on postal workers, and sabotaged the postal service in a blatant attempt to disenfranchise voters of color, who were already more harshly impacted by the coronavirus and required alternative methods to in-person voting to protect their health and safety.

We saw this when the former President of the United States and his cronies tried to force Michigan officials to decertify votes from heavily Black districts, which would have thrown out millions of legal ballots cast by registered Black voters.

We saw it in Pennsylvania, where he tried to bully the courts into invalidating millions of Black votes based on an alleged technicality not found anywhere in law.

We saw it in Georgia, where local operatives attempted to kick thousands of legally registered voters off the polls after it was too late for them to re-register.

We saw it in Texas, where state actors tried to eliminate curbside voting during a pandemic and when that failed, tried to have those legally-cast ballots invalidated.

And I saw it right here in Mississippi where the NAACP documented numerous instances of voter suppression. For example, polling places in Black neighborhoods throughout the state endured an increased and very visible police presence – not because of any valid safety concerns, but strictly to intimidate Black voters. Black voters were purged from voting rolls and forced to vote provisionally, without any certainty that their vote would eventually be counted. Late openings, equipment problems,
long lines in predominantly Black neighborhoods imposed more than mere inconvenience, but forced many voters to choose between their jobs (or their paychecks) and their vote.

As serious as those and other problems were, we now see that 2020 was just a dress rehearsal for upcoming elections. The new Jim Crow generation has ramped up its efforts to suppress the political power of Black Americans to a new level, with tools and tactics their predecessors could only dream of. There are new lyrics to the same old song.

Even if we can find a way to overcome the obstacles they are constructing – if we can navigate the complicated and unnecessary requirements for voting by mail, find a scarce drop box, withstand the intimidation, threats, and violence intended to scare us away from the polling place, stand in line for hour after hour after hour with no food or water, and skirt the other tripwires to put our vote into the ballot box – they are creating an elaborate, insidious and carefully coordinated legal framework to ensure our ballot, once cast, is not counted and does not count.

This is happening and they will succeed unless immediate action is taken to disrupt this immoral and undemocratic crusade to take the vote away from millions of people. That action is right before you, in your hands. The Freedom to Vote: John R. Lewis Act will curtail voter suppression and vote manipulation and go a long way toward disrupting the effort to disenfranchise Black voters.

In his I have a Dream speech, Dr. King referred to a southern governor with “lips dripping with the words of interposition and nullification.” Today, governors, state and federal legislators, and a former president of the United States, amplified by a right-wing media, are loudly and proudly spewing words of interposition and nullification as they openly fashion the legal mechanism for the disenfranchisement of millions of Black Americans.

Don’t be fooled into thinking this is just “partisan politics” or being done for partisan electoral gain. No. This is specifically designed to and, if successful, will strip Black Americans of our political power, and force us back into second-class citizenship. The purveyors of this may be using their partisan advantage to pass these laws, but they are doing it to achieve a racial and racist end: to entrench white supremacy so deeply in our body politic, it will be difficult for Blacks to ever achieve political, economic, educational, and social equality.

But that doesn’t have to happen. The NAACP and other groups and individuals are using all legal means to make sure it doesn’t. NAACP lawyers, following in the footsteps of our great General Counsels Charles Hamilton Houston and Thurgood Marshall, are combatting voter suppression and racial gerrymandering in cases across the country. We’ve fought and are fighting in more than a dozen other states, including Georgia, Illinois, Maryland, Pennsylvania, Wisconsin, Michigan, Mississippi and Ohio, where we achieved an important victory in the state Supreme Court last week.

But this battle isn’t just for the NAACP and the Leadership Conference and LDF and the Lawyers Committee and other civil rights organizations to wage. No American who values this country’s freedoms can afford to sit idly on the sidelines to see how this plays out. This is a mission that everyone who cares about our country and believes in our Constitution should join. Because today, they’re coming for us. Tomorrow, they come for our democracy.
The NAACP has never backed down from those who would deprive us of equality and justice and we will not back down now. But we can’t do it alone. We need Congress to join us and hold true to your Constitutional duty to protect our vote.

Earlier this week, we marked Dr. Martin Luther King’s birthday. And we watched numerous Members of Congress take to social media and the airwaves to quote Dr. King and embrace his life and legacy. I say to all of you that words are nice, but in the end, it is your actions that matter and that you will be remembered for. And the action we need from you now is to stand on the right side of history and pass the Freedom to Vote: John R. Lewis Act.

Thank you for this opportunity to testify before you today. I will be happy to take your questions.
Mr. COHEN. Thank you, Mr. Johnson, and thank you for your work and representing the NAACP and Tougaloo.

Helen Butler is the Executive Director of the Georgia Coalition for the Peoples’ Agenda. In that role, she leads an advocacy organization founded by the Honorable Reverend Dr. Joseph E. Lowery. These initiatives have increased citizen participation in the government of their communities in areas that include education, criminal and juvenile justice reform, voter protection, and economic development.

Ms. Butler, you are recognized for five minutes.

STATEMENT OF HELEN BUTLER

Ms. BUTLER. Thank you. Good morning, Chair Cohen, Vice-Chair Ross, Ranking Member Johnson, and Members of the Committee.

I am Helen Butler, Executive Director of the Georgia Coalition for the Peoples’ Agenda, and I thank you for allowing me this opportunity to talk about the ongoing threats to the voting rights of Georgia’s Black voters and other voters of color which deny them equal access to the ballot box and, ultimately, undermine democracy.

The Peoples’ Agenda has always been dedicated to fighting for the voting rights of Georgia’s citizens through public education, training, advocacy, and mitigation. However, we are spending even more time and limited resources fighting discriminatory voting laws, policies, and procedures at the State and local levels in Georgia without the preclearance process of section 5 that would have prevented many of these discriminatory voting laws and discriminatory redistricting plans from taking effect.

According to the Census, Georgia was one of the top five States gaining population in the past decade, with Black people accounting for 12.5 percent; the Latinx population, 32 percent; and the AAPI population, 52 percent. By contrast, Georgia’s White population decreased by four percent.

The electorate has undergone significant demographic changes with increases in the percentage of Black Georgians and other Georgians of color registering to vote, participating in elections, and utilizing mail voting and early voting for casting their ballots in all their elections. These changes in voting patterns have resulted in corresponding political changes, as we saw with our historic election of our first Black U.S. Senator, Raphael Warnock, and first Jewish Senator, John Ossoff.

In response to this increasing diversity of Georgia’s electorate, our majority party enacted SB 202, an omnibus voter suppression bill which drastically altered the process by which voters applied for and received absentee ballots for mail-in voting. They placed new restrictions and severe penalties on public officials and nonprofit groups like mine for providing absentee ballot applications to voters who need them. It outlawed nonprofit organizations from providing just water and comfort items to voters who stood in line, long lines, waiting to vote at polling locations, and other suppressive restrictions and penalties.

At the same time, SB 202 allowed voter challenges, including partisans seeking to suppress the vote, lodging frivolous challenges which required election officials to schedule time-consuming hear-
ings, even while administering elections, and only giving voters three days' notice to respond, and that notice was by mail, which oftentimes meant that they would have to leave their jobs or school commitments and not be able to attend to defend their right to vote.

Just last night, the Peoples' Agenda and other Georgia grassroots organizations were in Lincolnton in Lincoln County, Georgia, a rural county with a large land mass, no public transportation, and approximately 6,000 registered voters for a Board of Elections meeting where the Board was planning to vote on a proposal to close all seven of the county's existing polling places and replace them with a single vote center in a gymnasium located on a two-lane country road outside of the main downtown business and residential districts in the city of Lincolnton.

This proposal came on the heels of new restrictions to absentee voting in SB 202, as well as another bill signed by Governor Kemp in 2021 that reconstituted the Lincoln County Board of Elections to ensure that the majority party would have control over the appointment of a majority of the Members of Boards of Elections.

In an effort to stop this change from happening, the Peoples' Agenda and our partners presented the Board of Elections with a petition under Georgia law which would prohibit the county from moving forward with polling place changes if 20 percent of the voters in a precinct signed the petition. That petition we submitted met the threshold, but three of the seven precincts during the Board of Elections meeting, of course—

Mr. COHEN. Ms. Butler, your time is up.

Ms. BUTLER. Oh, sorry. Okay.

What I am saying to this is that we really need the full force and the passage of the Freedom to Vote: John R. Lewis Act to ensure the protection of the right to vote for all Americans because we stand in imminent danger of having our hard-fought rights denied in greater numbers. Please Act now like our voting rights and democracy depend upon it because it does.

[The statement of Ms. Butler follows:]
TESTIMONY OF HELEN BUTLER
EXECUTIVE DIRECTOR, GEORGIA COALITION FOR THE PEOPLE’S AGENDA

UNITED STATES HOUSE OF REPRESENTATIVES, JUDICIARY COMMITTEE
SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS, AND CIVIL LIBERTIES
HEARING ON
“VOTER SUPPRESSION AND CONTINUING THREATS TO DEMOCRACY”

VIA ZOOM VIDEO WEBINAR
JANUARY 20, 2022 - 10:00 A.M.
I. Introduction

Chair Cohen, Vice Chair Ross, Ranking Member Johnson, and Members of the Committee, my name is Helen Butler and I am the Executive Director of the Georgia Coalition for the People’s Agenda (“PEOPLE’S AGENDA”).

The PEOPLE’S AGENDA is a non-partisan, non-profit organization founded by the late Reverend Dr. Joseph E. Lowery. It is comprised of a coalition of representatives from civil rights, human rights, peace and justice organizations, and concerned citizens of the State of Georgia. The PEOPLE’S AGENDA is based in the greater Atlanta metro area, but we have members located throughout the entire State of Georgia who help to advance our mission and achieve our organizational goals.

Our mission is to improve the quality of governance in Georgia, create a more informed and active electorate, and ensure responsive and accountable elected officials. A significant focus of our work is on voter empowerment and ensuring equal access to the ballot for eligible Black Georgians, other Georgians of color, and under-represented communities.

The PEOPLE’S AGENDA’S voter empowerment work includes providing voter registration assistance with a focus on education and mobilization, at Historically Black Colleges and Universities (HBCUs), high schools, naturalization ceremonies, and community events. The PEOPLE’S AGENDA also conducts town hall meetings and candidate forums to provide opportunities for Georgia voters to learn about candidate positions and to engage in dialogues. We also operate a “Get Out the Vote” campaign in central locations throughout the state to encourage voter turnout; conduct our Election Protection Project which informs voters of their rights and provides immediate relief for problems encountered on or before Election Day; and manage our “Vote Connection Center” which provides training and technical assistance to nonprofit organizations and individuals through effective issue campaign organizing and civic engagement.

The PEOPLE’S AGENDA has always been dedicated to fighting for the voting rights of Georgia’s citizens through public education, training, advocacy, and litigation. However, we have been forced to spend even more time and limited resources fighting discriminatory voting laws, policies, and practices at the state and local levels in Georgia in the wake of the Supreme Court’s 2013 decision in Shelby County v. Holder due to the lack of the preclearance process and consequent loss of advance notice of voting changes that discriminate against Black voters and other voters of color.

II. Georgia’s Increasing Racial and Ethnic Diversity Fueled Efforts by Georgia’s Majority Party to Enact Voter Suppression Laws

According to the 2020 Census, Georgia was among the top five States gaining population in the past decade, with the addition of 1,024,255 residents since 2010—a 10.6% increase.1

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People of color account for nearly all of Georgia’s population growth since 2010, with Georgia’s Black population increasing by 12.5%, Latinx population by 31.6% and AAPI population by 52.3%. By contrast, Georgia’s White population decreased by 4%.²

In the last two decades, the Georgia electorate has undergone significant demographic changes, with increases in the percentage of Black Georgians and other Georgians of color registering to vote, participating in elections, and utilizing mail voting and early voting for casting their ballots.

These demographic changes and voting patterns have resulted in corresponding political changes in the state, including during the 2020 election cycle when Georgia elected its first Democratic presidential candidate since 1996, Joseph R. Biden, and its first Black United States Senator, Reverend Raphael Warnock.

Instead of embracing the increasing racial and ethnic diversity of Georgia’s electorate and attempting to appeal to Black voters and other voters of color through public policies and legislation which support these voters’ interests, the response by the majority party and Governor Kemp to these political changes was to enact new voter suppression laws during the 2021 regular legislative session to make it more difficult for Georgia’s Black voters and other voters of color to vote.

These new laws also came on the heels of unprecedented efforts by the former President and his allies to overturn the presidential election results in Georgia and in other battleground states based upon patently false assertions of widespread voter fraud - which were particularly aimed at jurisdictions having large populations of Black and Brown voters, such as Georgia in general and Fulton County in particular - and false claims that the state’s Dominion voting machines flipped votes for President Trump to Joe Biden.

Notwithstanding the fact that Georgia Secretary of State, Brad Raffensperger, repeatedly rejected the notion that there had been widespread voter fraud in the 2020 election cycle or that Georgia’s voting machines switched votes following audits and hand counts of the ballots,³ the former President and his allies nevertheless have continued to make false claims of voter fraud and voting machine interference, inspiring legislators in Georgia to enact laws that suppress the votes of Black and Brown Georgians and will undermine free and fair elections in our state.

³ Id.

² David Wickert and Greg Bluestein, Georgia election chief to Trump: Drop the fraud allegations, Atlanta Journal-Constitution, December 2, 2020 (available online at HTTPS://WWW.AJC.COM/PO/GEORGIA-ELECTION-CHIEF-TO-TRUMP-DROP-THE- FRAUD-ALLEGATIONS/P/52L736B2424A/).

³ Alison Durkee, Georgia Election Official: No Voter Fraud In Runoffs Except In Trump’s ‘Fertile Mind,’ Forbes, January 26, 2021 (available online at HTTPS://WWW.FORBES.COM/SITES/ALISONDURKEE/2021/01/06/GEORGIA-ELECTION-OFFICIAL-NO-VOTER-FRAUD-IN-RUNOFFS-EXCEPT-IN-TRUMP’S-FERTILE-MIND/?sh=22173682434A).
As a result of these false claims, election officials in Georgia and other battleground states have faced terrorizing death threats to themselves and their families and a number of Georgia’s election officials have resigned from their jobs since the 2020 election cycle, including the directors of election in Macon-Bibb, Fulton, Gwinnett, and Augusta-Richmond counties, as well as in other states.

Shortly after Governor Brian Kemp signed SB 202, Georgia’s omnibus voter suppression bill into law, Georgia’s Republican Lieutenant Governor, Geoff Duncan, told CNN that the law was the fallout from a 10 week misinformation campaign by the former president and his allies, including by his personal attorney, Rudy Giuliani, who “showed up in a couple of committee rooms and spent hours spreading misinformation and sowing doubt across, you know, hours of testimony.”

a. Georgia Senate Bill 202 (Enacted on March 25, 2021)

SB 202 was enacted by Governor Kemp after it was passed along party lines during the 2021 regular legislative session. The bills were rushed through committees in the Georgia House and Senate, often with little or no time for the minority party’s members on the committees - much less the general public - to have an opportunity to review the final versions of the bills before they were voted upon. This process, with virtually no real transparency nor bipartisan support, culminated in the passage of an omnibus voter suppression bill, Senate Bill 202, the “Election Integrity Act of 2021” (“SB 202”), on March 25, 2021.

4 Linda So, Trump-inspired death threats are terrorizing election workers, Reuters, June 11, 2021 (available online at: https://www.reuters.com/investigates/special-report/usa-trump-georgia-threats/).


10 Sara Merz, Georgia’s GOP lieutenant governor says Giuliani’s false fraud claims helped lead to restrictive voting law, CNN, April 8, 2021 (online at https://www.cnn.com/2021/04/07/politics/gooF-duncan-voter-fraud-cmnt/index.html).

The very same day the General Assembly passed SB 202, Governor Brian Kemp swiftly signed the bill into law in the presence of a group of six White men and in front of a painting of the Callaway Plantation - the site of a former cotton plantation where over one hundred enslaved Black people served its owners.

The preamble of SB 202 clearly indicates it was crafted with the former President’s misrepresentations and disinformation about the 2020 election being “stolen” from him in mind. Among other things, the preamble indicates that the overhaul of Georgia’s election procedures was necessary due to a significant “lack of confidence” in Georgia election systems, with many electors purportedly concerned about allegations of “rampant voter suppression” and about allegations of “rampant voter fraud.” The preamble also asserts the law was designed to “address the lack of elector confidence in the election system,” reduce the burden on election officials, and streamline the process of conducting elections by promoting uniformity in voting.

Instead, SB 202 substantially increased burdens on voters, targeting methods of voting increasingly being used by Black Georgia voters and voters of color with arbitrary and unnecessarily burdensome requirements that will disenfranchise voters and potentially expose non-profit civic engagement organizations, such as the PEOPLE’S AGENDA, to large fines and criminal penalties for providing assistance to voters who will now need to navigate the law’s complicated procedures. SB 202’s discriminatory changes include:

(1) Onerous and arbitrary absentee ballot application and ballot ID requirements that weigh more heavily on Black voters, other votes of color and lower income voters who do not have a Georgia driver’s license or state ID number. If a voter does not have a Georgia driver’s license or state ID number to put onto their absentee ballot applications, they must include a copy of another form of acceptable ID with the absentee ballot application and, if they do not have a Social Security number, they must include a copy of the ID when returning the voted ballot. And this must be done for each election in an election cycle, including each primary, general, special, and runoff election.

Since voters cannot use an identification number from the so-called “free” voter ID card that Georgia voters may apply for if they do not have a Georgia driver’s license or state

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14 SB 202, Section 2.

15 Id.

16 See SB 202, Sections 25, 27 and 28.
ID card when applying for an absentee ballot or returning the ballot under the new law, voters would even have to submit copies of the “free” voter ID under the law when applying for an absentee ballot or when returning their voted ballot.

Black voters and other voters of color are proportionately less likely to have computers in their homes and suffer from significantly higher rates of poverty than White voters. Without the technology to scan, print, fax or email these multiple copies of ID documents in the home, these voters will face undue and disparate burdens on their ability to vote by mail. This burden is amplified because the law also criminalizes the “handling” of absentee ballot applications by third parties with few exceptions for people who assist voters in navigating these new requirements, including if they help the voter scan or copy the completed application and ID documents or try to help them fax or email the application and ID documents to election officials.17

If voters without a Georgia driver’s license or state ID card do not include copies of alternative ID documents with their absentee ballot applications, the applications will be rejected. If the voters fail to provide the copies of the ID documents when they return the voted ballot, they will be required to produce a form of acceptable ID to the county registrar within three days of the election for their absentee ballot to count.18

(2) Prohibiting public agencies and public employees from sending unsolicited absentee ballot applications to voters - something that the Georgia Secretary of State did when he sent unsolicited absentee ballot applications to all of Georgia’s active voters ahead of the June 2020 primary elections - and which a number of County Registrars offices did in previous election cycles to encourage absentee voting and voter turnout.19

(3) Criminalizing the “handling” of any completed absentee ballot application by anyone other than the voter (with a few exceptions), which would even prevent a voter who does not have access to a fax machine or scanner from receiving help from the PEOPLE’S AGENDA or other non-profit civic engagement groups in faxing or scanning the completed application, so that it can be submitted electronically to election officials unless we are providing assistance to a disabled voter.20

(4) Subjecting private individuals and non-public entities, including the PEOPLE’S AGENDA and other non-profit civic engagement organizations attempting to assist voters with absentee voting, to potentially large fines for sending absentee ballot applications to voters unless we check the Secretary of State’s data files in advance to determine whether a voter has already requested an absentee ballot application, returned

17 Id.
18 Id.
19 See SB 202, Section 25.
20 Id.
the application or voted an absentee ballot.\textsuperscript{21}

Even if the voter requested an absentee ballot application from their county registrar and it was never received or the voter submitted an application and never received their ballot, PEOPLE’S AGENDA and other non-profit civic engagement organizations would run the risk of being fined if we sent another application to that voter. The law also requires the PEOPLE’S AGENDA and other groups and individuals to use the official absentee ballot application from the Secretary of State’s office when sending ballot applications to voters, but we must provide a confusing disclaimer that the application was not being sent by a public entity or public official.\textsuperscript{22}

(5) Prohibiting persons other than the voter from touching or handling a completed absentee ballot applications unless the voter is disabled, which would even preclude a voter asking the PEOPLE’S AGENDA, a friend, neighbor or other non-profit civic engagement organizations to fax their application to the registrar’s office because they do not have access to a fax machine and limits the return of ballot applications, as well as absentee ballots, to close relatives, housemates or, in the case of disabled voters, a potential caretaker.\textsuperscript{23}

(6) Delaying and compressing the time during which a voter can request or submit an absentee ballot and shortening the time when a runoff election takes place to 28 days after the original election, which will substantially shorten the voter registration period and early voting period for runoff elections.\textsuperscript{24}

(7) Giving county registrars unfettered discretion to limit early voting hours from 9 a.m. to 5 p.m. and to entirely eliminate Sunday early voting,\textsuperscript{25} thereby making it difficult for voters who work, go to school or have other obligations during the workday to be able to access early voting, and leading to the elimination of Sunday early voting in some counties despite its popularity with Black voters and other voters of color who conduct “Souls to the Polls” get out the vote campaigns involving Black Churches and other faith organizations following Sunday services.\textsuperscript{26}

(8) Severely restricting the number of, and access to, absentee ballot drop boxes, which

\textsuperscript{21} Id.

\textsuperscript{22} Id.

\textsuperscript{23} Id.

\textsuperscript{24} See SB 202, Section 42.

\textsuperscript{25} See SB 202, Section 28.

\textsuperscript{26} In 2018, conservatives in the legislature attempted to eliminate Sunday early voting in House Bill 363. However HB 363 died in the wake of negative media attention and advocacy by the PEOPLE’S AGENDA and other civic engagement and civil rights organizations. See Kira Lerner, UPDATED: Georgia bill that would eliminate Sunday voting and suppress black turnout fails, Think Progress, March 16, 2018, available at: https://thinkprogress.org/georgia-sunday-voting-cut-9e1c2f3df018/.
were heavily used by Georgians in the 2020 election cycle and were a more secure and reliable method of returning absentee by mail ballots than through the U.S.P.S. mail boxes. Under the new law, drop boxes must be inside early voting locations and will be available only during the days and hours when early voting is taking place, thereby making them unavailable to voters who cannot vote during early voting hours due to work, school, or other obligations during the day. Additionally, counties are limited to having one drop box per 100,000 registered, voters, which substantially limits the total number of drop boxes for each county.\(^\text{27}\)

(9) Disenfranchising out-of-precinct voters by arbitrarily prohibiting any out-of-precinct voting before 5:00 p.m. on Election Day and allowing only limited out-of-precinct voting after 5:00 p.m. for voters who go to the incorrect polling place in the county where they are registered to vote and swear out an affidavit that they cannot get to their correct polling location before the close of the polls at 7:00 p.m.\(^\text{28}\) This change penalizes voters who do not receive timely or adequate notification of their polling locations and ignores the fact that Black voters and other voters of color have been disproportionately impacted by polling place closures and change in the wake of the Shelby County decision that often result in voters going to the wrong polling place on Election Day.\(^\text{29}\)

(10) Targeting jurisdictions with large populations of Black voters and other voters of color by stripping the Secretary of State of his vote on the State Election Board, replacing the Secretary of State with a voting member appointed by the General Assembly, and granting the State Election Board the power to effectively take over county Boards of Election.\(^\text{30}\)

(11) Encouraging “unlimited” voter challenges on the eve of elections by other electors in the same county as the challenged voters.\(^\text{31}\) True the Vote, along with Republican party operatives, led a campaign in numerous Georgia counties to challenge more than 364,000 registered Georgia voters for alleged address changes ahead of the January 2021 U.S. Senate runoff elections with little to no evidence showing the voters were not eligible to vote, substantially burdening election officials who were in the midst of preparing for and administering the elections.\(^\text{32}\) SB 202 now codifies these types of challenges.

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\(^{27}\) See SB 202, Section 26.

\(^{28}\) See SB 202, Section 34.


\(^{30}\) See SB 202, Sections 3, 5-7, 12.

\(^{31}\) See SB 202, Section 15.

mass voter challenges into Georgia law, regardless if there is any evidence supporting them, and forces elections officials to conduct hearings within ten days of every challenge, with only three days’ notice by mail of the hearings to challenged voters.

(12) Criminalizing the act of providing water and food to persons within 150 feet of a polling place or within 25 feet of any voters waiting in line waiting in line to vote, despite Georgia’s history of forcing voters to wait in hours’ long lines at polling locations - particularly in areas serving Black voters and voters of color, which have been disproportionately impacted by polling place closures.

(13) Prohibiting the use of mobile voting units, such as the two mobile units purchased by Fulton County for $750,000 and deployed to alleviate overcrowded polling places and long lines, unless the Governor declares an emergency and they are used to supplement the capacity of the polling place where the emergency circumstance occurred. Due to the gutting of Section 5 of the Voting Rights Act as a result of the Supreme Court’s decision in Shelby County v. Holder, there is no longer the notice and preclearance process available to ensure that laws like SB 202 do not retrogress the voting strength of Georgia’s Black and Brown voters.

As a result, the PEOPLE’S AGENDA was one of numerous nonprofit civil rights and civic engagement organizations which were forced to commence litigation challenging the law under the 14th and 15th Amendments and under Section 2 of the Voting Rights Act of 1965. But even though the PEOPLE’S AGENDA and other nonprofit civic engagement and civil rights organizations are challenging SB 202 in federal court, the controlling party in the General Assembly has made it crystal clear that it will continue to find new ways to suppress the votes of Black and Brown people by introducing even more voter suppression bills during the 2022 legislative session.

For example, President pro tempore of the Senate, Senator Butch Miller, has already introduced SB 325 to abolish absentee ballot drop boxes - notwithstanding the popularity of the drop boxes among voters and election officials alike - and the fact that they are more secure and dependable than United States Post Office delivery of the ballots, as well as a bill, SB 71, to end no-excuse absentee voting in the state.

b. Legislative Reconstitution of County Boards of Election and the

33 See SB 202, Section 33.

34 Stephen Fowler, Why Do Nonwhite Georgians Have To Wait In Line For Hours? Too Few Polling Places, Georgia Public Broadcasting, supra.

35 See SB 202, Section 20.

Removal of Black Board Members

During the 2021 legislative session, conservative members of the General Assembly also waged war against selected counties’ Boards of Elections in an effort to purge Black board members and other board members they knew would not support their unprecedented usurpation of free and fair elections in our state.

Morgan County, where I had served as a member of the Board of Elections since 2010 and was a staunch advocate for voting rights and fair elections, is one of the Boards of Elections that the majority party reconstituted by giving control over all appointments to the Republican controlled Board of County Commissioners. This resulted in my removal as a Board Member, along with a second Black Board Member, Avery Jackson. See HB 162.37

The General Assembly also targeted the Troup County Board of Elections, which was reconstituted with the enactment of HB 684.39 As a result of this bill, long-time Black Board Member, Ms. Lonnie Hollis was ousted. Ms. Hollis advocated for Sunday voting as well as a new precinct location at a Black church in a nearby town before her removal from the Board of Elections.40

The Lincoln County Board of Elections was also reconstituted with the enactment of SB 282 and 283.41 The new law ends the bipartisan appointment process for the nomination of the board members and gives the majority Republican Lincoln County Commission the power to appoint a majority of the board members (3 of 5) with the City of Lincolnton and Lincoln County School Board having the authority to appoint one board member each.

Shortly after the reconstitution of the Lincoln County Board of Elections, the Board Chair, Jim Allen, began to implement a plan to close all of the county’s existing polling places and to create a single polling place for the county’s more than 6,000 active registered voters at a gymnasium located outside of the central business district in a county with no generally

40 How Republican States Are Expanding Their Power Over Elections, supra.
42 Georgia Secretary of State, Active Voters by Race and Gender (By County with Statewide Totals), available at: https://sos.ga.gov/index.php/Elections/voter_registration_statistics.
available public transit system in a county spanning some 257 square miles. If this plan is implemented it will undoubtedly reduce turnout in upcoming elections, particularly for those who lack access to a vehicle and are unable to walk 10 or more miles to get to the only polling place in the entire county.

With the start of the 2022 legislative session on January 10, 2022, the majority party has already introduced a bill, SB 284, targeting the Randolph County Board of Elections for a takeover of the Board of Elections to ensure that the administration of the elections will be controlled by the majority party. The Randolph County Board of Elections had previously been involved in a controversial, and ultimately unsuccessful, attempt to close polling places in majority Black areas of the County. The closure and consolidation of more polling places in Georgia will have an even greater negative impact on Black and Brown voters, particularly in rural areas, where they have less or no access to public transportation to get to and from more distant polling locations and many lack access to broadband internet, and to computers and printers in their homes which are needed to download the Secretary of State’s absentee ballot application form and to copy the newly required ID documents to submit with the forms. Moreover, if the majority party is successful in enacting SB 71 in the current legislative session, it will end no-excuse absentee voting in the state and force even more voters to cast ballots in person.

In the absence of preclearance under Section 5 of the Voting Rights Act and the stalled federal legislation to ensure free and fair elections, I am extremely alarmed at the majority party’s agenda for the 2022 Georgia legislative session and the majority party’s shameless efforts to undermine our democracy by continuing to press forward with legislation premised upon the false election fraud narratives by the former President and his supporters.

The time is now to enact voting rights laws to ensure equal access to the ballot box and to prevent the former President and his wing of the Republican party from undermining our democracy and freedom to elect our candidates of choice in Georgia’s elections.

c. The Enactment of Georgia’s Discriminatory Redistricting Maps

The 2021 redistricting cycle in Georgia was the first redistricting cycle in decades where Georgians did not have the benefit of the Section 5 preclearance process in place for the review of Georgia’s redistricting maps by the Department of Justice (DOJ) before their enactment. As a

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result, the majority party drew plans which dilute the voting strength of Black voters and other voters of color, and which discriminate against them on the basis of race. Governor Kemp signed these discriminatory redistricting maps into law on December 30, 2021.

The majority party’s map drawers (1) strategically removed Black, Latinx, and AAPI voters from existing and performing majority-minority districts and dispersed them into White majority districts in rural and/or suburban areas where they will no longer have the ability to elect the candidates of their choice, and (2) packed Black voters and other voters of color into districts with high minority populations. The Controlling Party’s legislators could have had only one motive for passing such illegal plans: the desire to limit the voting strength of voters of color statewide.

In the absence of preclearance and the gutting of Section 5 of the Voting Rights Act, the PEOPLE’S AGENDA and other nonprofit civic engagement and civil rights organizations have been forced to commence litigation to enjoin the use of these new redistricting plans.

**d. Polling Place Closures and Changes**

In the aftermath of the *Shelby County* decision in 2013, many of Georgia’s county boards of election proposed or took action to close, consolidate or move polling locations—oftentimes in areas primarily serving voters of color and in underrepresented communities.

In fact, while Georgia added almost 2 million voters to its voter registration rolls since 2013, the total amount of polling places statewide decreased by 10 percent according to a joint report by Georgia Public Broadcasting, National Public Radio and ProPublica. 46 By June 2020, the report found “Georgia voters had 331 fewer polling places than in November 2012, a 13% reduction.” 47 This report also found stark racial disparities in the decrease in polling locations in Black neighborhoods which have translated into long lines and delays at the polls. The report found that approximately two-thirds of the polling locations that had to stay open past the 7:00 p.m. poll closing time in the June 9, 2020 primary were in majority Black neighborhoods 48

The PEOPLE’S AGENDA anticipates that the efforts to close and change polling locations is likely to continue, especially in light of the campaign by the legislature in 2021 and in the 2022 session to reconstitute and take over county Boards of Election to remove Black Board members and others who have opposed such efforts in the past.

Since the *Shelby County* decision, the PEOPLE’S AGENDA and other civic engagement organizations have been forced to devote a significant amount of time and resources to monitoring proposals to close, consolidate or move polling locations across the state’s 159 counties. Our work dealing with these polling place changes has included issuing public records

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46 *Why Do Nonwhite Georgia Voters Have to Wait in Line for Hours? Too Few Polling Places*, Georgia Public Broadcasting, supra.

47 Id.

48 Id.
requests for county boards of election minutes and agendas, sending staff and coalition members
to observe and make comments at board of election meetings, submitting written objections to
proposals to close or change polling locations, and organizing rapid response actions with
community members who are impacted by these changes.

In the aftermath of the Shelby County decision and in the absence of preclearance, we
often have little or no reasonable advance notice of these polling place changes, and there has
been a lack of transparency in the stated rationales for these changes in communities of color.
We are often forced to turn our attention toward organizing a rapid response in an attempt to stop
or ameliorate these changes while juggling our other important organizational initiatives and
priorities.

Prior to the Shelby County decision, county boards of election were required to submit
polling place and voting precinct changes to DOJ for preclearance to ensure that the changes did
not retrogress the ability of people of color to elect candidates of their choice, or discriminate
against Black voters and other voters of color. The preclearance process prevented many of these
changes from taking effect and acted as a deterrent to the adoption of such changes.

While the PEOPLE’S AGENDA and our state partners have achieved some success in
stopping or ameliorating the scope of some polling place changes post-Shelby, we have been
unable to prevent them all from taking effect. Some of the additional post-Shelby efforts to close,
consolidate or move poll locations by county boards of elections in Georgia have included, but
are not limited to:

- A proposal to close all seven existing polling places in rural Lincoln County and
  create a single polling place for more than 6,000 registered voters outside of the
downtown district and residential centers in the county with virtually no available
public transit.

- A proposal to close all but two polling places in Randolph County, which would
  have disproportionately impacted voters of color and suppressed the vote of
  people of color in this economically challenged, rural county, was tabled after the
  PEOPLE’S AGENDA and other advocacy groups organized community
  opposition to the plan;

- A proposal to eliminate all but one of the City of Fairburn polling places, even
  though the number of polling places had been increased in recent years because of
  long lines on Election Day, was rescinded following advocacy efforts by the
  PEOPLE’S AGENDA and other groups;

- A proposal to eliminate all but one of Elbert County precincts and polling
  locations to the detriment of voters of color in a rural county with no robust public
  transit service was rescinded after opposition by advocacy groups and voters;
The PEOPLE’S AGENDA and other groups have led advocacy efforts to oppose polling place and precinct changes in Fulton County in the wake of Shelby with some success;

A proposal to close 2 of 7 precincts and polling places in Morgan County after the county previously reduced the number of polling locations from 11 to 7 in 2012, was rejected after the board considered opposition to the plan by the PEOPLE’S AGENDA.

A proposal to reduce the number of precincts and polling locations from 36 to 19 in Fayette County was tabled in the face of opposition by the PEOPLE’S AGENDA, other civic engagement groups and voters;

A proposal to consolidate all polling locations to a single location in Hancock County, a majority-Black, economically challenged, rural county with no regularly scheduled public transit, was tabled after the PEOPLE’S AGENDA, other civic engagement groups and voters organized against the proposal;

A proposal to eliminate 20 of 40 precincts and polling locations in majority-Black and economically challenged neighborhoods in Macon-Bibb County was scaled back as a result of advocacy efforts by the PEOPLE’S AGENDA and other civic engagement groups; and,

A proposal by the Macon-Bibb County Board of Elections to move a polling location in a majority-Black precinct from a public gymnasium to a Sheriff’s Office was defeated only after 20% of the registered voters in the precinct signed a petition opposing the move.

Consequently, we often have to devote even more time and resources to assist voters impacted by these changes. Since polling place closures and relocations are not always widely publicized by county boards of election, voters often show up to vote on Election Day at their former polling place and are surprised to learn that the poll has moved. In light of the changes made to out-of-precinct voting by SB 202, voters who show up to the incorrect polling location on Election Day before 5 p.m. will be disenfranchised if they cannot vote at their correct polling location before it closes. Voters who arrive after 5 p.m. will have to sign a sworn statement that they cannot get to their correct polling location by close of the poll or will be required to go to their correct polling location to cast their ballot.

Voters who are used to walking to their polling place and learn on Election Day that the poll has been moved several or even more miles away may be unable to travel to the new polling location that day, especially if there is no accessible public transit. Some voters may have other commitments with their jobs, childcare, or other responsibilities which prevent them from spending more time traveling to the new polling location and, as a result, it is foreseeable that eligible voters will be disenfranchised by such poll closures.
Therefore, it is critically important that Congress restore the preclearance provisions of
the Voting Rights Act to ensure that the increasingly partisan Boards of Election are not allowed
to close and change polling locations to disenfranchise voters in order to achieve a partisan
result.

e. Georgia’s Flawed Voter Registration Citizenship Match

The PEOPLE’S AGENDA, voters, and advocates were forced to litigate multiple
lawsuits for more than a decade challenging various iterations of the state’s “exact match” voter
registration process that was demonstrated to prevent Georgia’s eligible people of color from
completing the voter registration process. In fact, just prior to the 2018 mid-term election, the
Associated Press reported that there were more than 53,000 voter registration applications on
hold because of Georgia’s “exact match” process—the vast majority of which had been
submitted by Georgians of color.

While the legislature and Governor Kemp finally abandoned the exact identity match
requirement, which prevented applicants from completing the registration process unless there
was an exact match of their name, date of birth, and Georgia driver’s license or Social Security
number listed on their voter registration form with the state’s Department of Driver’s Services or
Social Security records, they have done nothing to remedy the routine flagging of Georgia’s
United States citizens as potential non-citizens because of the state’s continued use of outdated
citizenship records in the voter registration process. The PEOPLE’S AGENDA and other civic
engagement organizations believe that the state’s refusal to reform the deficient citizenship
match process has more to do with the current anti-immigrant mood within certain segments of
Georgia’s state government and legislature than with any legitimate rationale that this process is
warranted to prevent non-citizens from registering to vote—particularly when the process relies
on outdated citizenship data that does not reflect current information about the citizenship of the
applicants.

As a result, the deficient and discriminatory citizenship match process has been allowed
to continue, delaying or preventing Georgians who are United States citizens from completing
the voter registration process. The PEOPLE’S AGENDA will be forced to continue to divert
time and scarce resources to the litigation challenging this process for the foreseeable future in
the absence of preclearance.

III. Conclusion

Despite these wide-ranging efforts to suppress the votes of Black and Brown Georgians
through the enactment of SB 202; the adoption of discriminatory Congressional, State House and
State Senate redistricting maps; and the new undemocratic challenges posed by legislation

Conference of the NAACP v. Kemp*, Civil Action No. 2:16-cv-00219-WCO (N.D. Ga. 2016); *Georgia Coalition for

100 Ben Nadler, Voting rights become a flashpoint in Georgia governor’s race, AP, October 9, 2018. (online at
https://www.apnews.com/fb011f39af3b4051bb57e8cece4e906c.)
allowing for the take-over and reconstitution of County Boards of Election by the majority party, the PEOPLE’S AGENDA and our sister organizations will continue our important work to protect the vote, eliminate barriers to the ballot box, and to ensure equal participation in the political process for Georgians of color and underrepresented communities.

However, we are extremely concerned about these alarming developments which have the potential of undermining the very foundations of our democratic principles of governing, free and fair elections, and equal access to the ballot box for Black voters and other voters of color in Georgia and in other states across the country. We implore Congress to act now to pass meaningful voting rights legislation.
Mr. COHEN. Thank you, Ms. Butler. I appreciate your testimony. Mr. Domingo Garcia, I don't believe—is he able to hear us? I think he is having technical difficulties, and so be it. He was to represent the United Latin American Citizens, LULAC, but he is not able to participate because of technical difficulties. So, thank you for your attempt.

Thank you for all the Witnesses.

We will now go under the five-minute rule with questions. I will begin by recognizing myself.

First, I just want to put another historical footnote.

Everett Dirksen, of course, behind me is a historical footnote and a great one to this day. The last Voting Rights Act we had in 2006 was named for Fannie Lou Hamer, Mr. Johnson, for Rosa Parks, for Barbara Jordan, and Cesar Chavez, and other great civil rights leaders.

A civil rights leader on our Committee is Ms. Lucy McBath of Georgia. I think it is appropriate at this point, after this published testimony, that I yield the remainder of my time to Ms. McBath, who knows firsthand what Georgia is doing in redistricting.

Ms. McBath, you are recognized for the remainder of my time.

Ms. McBATH. Well, thank you so much, Chair Cohen and Congressman Rankin, and all the Members, for allowing me just a moment to address the Committee today.

In recent years, and arguably even longer, my home State of Georgia, my district has kind of been the poster child for State-led voter suppression. The State has repeatedly sought to suppress the voices and the will of millions of Georgians, particularly African Americans. Sadly, voter suppression is not just a Georgia issue, as we have said today, but it is rampant across the South and increasingly in many other States in our great nation.

Voter suppression is just not a racial issue. It is an issue of democracy, and efforts to suppress the will of the people are, in turn, attempts to suppress the promise of democracy that was intended for our nation. When not all Americans are guaranteed the capacity to fully exercise their right to vote, and when votes are diluted, as we have watched, as is happening all over America, we weaken our country’s ability to live up to its full potential.

This Congress has a responsibility to and must pass voting rights legislation. As Martin Luther King, Jr., has said in the past, and I repeat this—so eloquently he spoke this—we are in “the fierce urgency of now.”

Thank you so much for allowing me a moment, and I yield back the balance of my time.

Mr. COHEN. You are very welcome, Ms. McBath.

Ms. Butler, people have said that—I think Mr. Roy said that—certain States like Delaware got less early voting than Georgia. Tell us some of the things that Georgia has done to oppress people's right to vote. Why is the voting rights law and the Supreme Court’s eye on Georgia? Why would that be important for people to vote?

Ms. BUTLER. Well, as I said, they are making it more difficult for people to be able to exercise their right to vote by mail. They are requiring photo ID to be submitted with their absentee ballot application.
Mr. Cohen. Let me ask you about that, because that is interesting. I am not—a lot of people are for voter ID and all. For absentee ballots, how do you do voter ID in Georgia? What do they want you to do, take a hologram and send it in?

Ms. Butler. Well, if you don’t have a Georgia driver’s license or a Georgia State ID, not even the free voter ID that you get from the State, but a State ID, then you have to provide one of the other pieces of ID, like a copy of your utility bill or some other piece of document that proves your name and address. Of course, to do that, you would have to have the capability of making copies.

Well, as we were in Lincoln County yesterday, there is not a FedEx center, there is not an Office Depot, for people to actually go and make copies. So, if you don’t have a copy machine at home, then how do you get a copy to send in, because you are still in a pandemic? They would be required to travel 15–20 miles one way to get to a polling location. So, it would be very difficult for them to do that.

Mr. Cohen. I got you. I see the problem. I see the problem.

Ms. Butler. Internet connection, too, is a problem.

Mr. Cohen. Yes, a lot of people in my district don’t have copy machines in their homes. They hardly have black-and-white televisions. It is not easy.

Mr. Henderson, you have been around a while. Tell me, back in the day, when you recall Republicans were leaders in civil rights and voting rights, like Everett Dirksen, what has changed?

Mr. Henderson. Well, thank you, Mr. Cohen, Chair Cohen, for your question. Your portrait of Everett Dirksen behind you is a very powerful reminder of the important bipartisan support for voting rights since the inception of the Voting Rights Act in 1965.

You mentioned in your opening statement the support of a bipartisan Senate and House of Representatives for the reauthorization of the Voting Rights Act in 2006. It is important to remember that. I remember when a Committee Chair of Judiciary, F. James Sensenbrenner, went to the floor of the House of Representatives to defend the Voting Rights Act against four amendments, any one of which could have easily derailed the bill. It was a powerful indication of the importance of leadership and bipartisan support that made that bill possible.

Unfortunately, our country today is very different than it was in 2006. It is incredibly polarized. We are seeing that polarization reflected in the unwillingness of Republicans in the Senate to even support a motion to proceed to debate, to even allow the bill to be debated.

When the Leadership Conference Membership and I sought to get support from Republicans, our Members wrote to 16 Republican Senators requesting a meeting, and particularizing activity taking place in each of their States, to justify why it was so important for them to at least express a willingness to sit down and talk. We found complete resistance to that effort.

So, to suggest, as has been done in the Senate, that we did not reach out to Republicans is simply false, and we have documented that in a series of letters that we wrote. It is impossible to have bipartisanship if one side completely refuses to even discuss an issue of extraordinary importance.
Mr. COHEN. Thank you.
Mr. HENDERSON. That is why this effort was so clear, yes.
Thank you.
Mr. COHEN. Thank you, Mr. Henderson, for explaining why it is complex and not simplistic to get these things done.
I now recognize the temporary Ranking Member, Mr. Roy, for questions.
Is Mr. Roy with us?
[No response.]
If not, is there a Republican with us?
[No response.]
The Republicans have left the room, like Elvis used to.
So, Mr. Nadler, you are on. Mr. Nadler?
Chair NADLER. Thank you. Thank you, Mr. Chair.
Ms. Ifill, in your testimony, you cite historical parallels between the urgency of this moment and the end of the Reconstruction Era. Could you further elaborate on this point and explain how the Voting Rights Act has, until now, served as a bulwark against the democratic backsliding we are witnessing in States like Georgia and Texas?
Ms. IFILL. Thank you very much, Chair Nadler. Yes.
As a matter of fact, I think this is a really important point. Because one of the things it is critical to understand about the voting suppression laws that we are seeing is that the rise in these laws began immediately after the Supreme Court’s decision in the Shelby County v. Holder case in 2013.
Within months, Texas had decided to resuscitate a voter ID law that they would not have been able to preclear, that they had, in fact, tried to preclear earlier, and were prevented from doing so. We sued and challenged that law, and we were, ultimately, successful. The trial court, in fact, found that there was intentional discrimination in the creation of that voter ID law.
So, the progress that Mr. Nobile talked about in Mississippi, for example, was directly the progress that came as a result of the Voting Rights Act; of the Voting Rights Act’s preclearance provisions; of section 2 of the other provisions that protected against conspiracies to interfere with the right to vote.
In the Reconstruction period, the Reconstruction Congress was very clear about what would be needed to ensure that Black people would be full citizens. The 13th, 14th, and 15th Amendments, obviously, are the amendments that were designed to ensure that—the 13th, ending slavery; the 14th, providing for birthright citizenship for both free and formerly enslaved Black people—their citizenship had been taken away by the Dred Scott decision—and including several provisions within the 14th Amendment that would punish Southern States that did not allow at that time Black men to vote. Then, the 15th Amendment, protecting against racial discrimination in voting.
In both the 14th and the 15th Amendments, the Reconstruction Congress included enforcement clauses, and those clauses gave Congress the power to enforce the guarantees that were articulated in the two Amendments. That is the power from which Congress was able to pass the Voting Rights Act. It is a statute that imple-
ments the power that was given to the Congress in the Constitution in the 14th and 15th Amendments.

It was that power that Congress did not use, frankly, for the first half of the 20th century and the last 20–30 years of the 19th century. They failed to use that power, which is why Black voters were disenfranchised in this country, particularly in the South, for most of the 20th century, until the civil rights movement pushed Congress, forced Congress to wake up, forced Congress to do its duty, forced Congress to fulfill its obligations under the 14th and 15th Amendments, by passing the Voting Rights Act, which provided those provisions that resulted in the ability of many Black people to be able to vote.

What was interesting—
Chair NADLER. Thank you.
Ms. IFILL. Can I just add one thing about the Voting Rights Act?
It was that, in the Act, in the legislative history, what the Congress said is that the Voting Rights Act, particularly, section 5, was meant not only to address voting discrimination that they were seeing at the moment, but to address what they described as “ingenious methods” that might be used in the future. They didn’t have laws then that kept you from providing water to people in line to vote, but they knew that there would be ingenious methods in the future. That was the purpose of preclearance, and that is why we need it back.
Chair NADLER. All right. Mr. Saenz, what is the difference between racial and partisan gerrymandering, and what are the challenges of proving race discrimination in gerrymandering under section 2?
Mr. SAENZ. Thank you, Congress Member.
The fact is that section 2 litigation is extremely difficult, and that is because it is litigated under the totality of the circumstances test established in the legislation. That means that you have to put together an array of experts on issues relating to discrimination in voting and beyond. You have to put together lay witnesses with experience in the dilution-of-vote suppression that you are challenging. It is simply extremely difficult to prove.
The same is true of racial gerrymandering, where you have to demonstrate that the predominant consideration by the redistricting body was race, when we know that race is relevant consideration. The Supreme Court has recognized that. So, you are trying to put what is done into a very narrow scope of over considering race.
The bottom line, as you know, is that litigation under section 2 and under the Constitution is extremely expensive and why we need preclearance as an ADR mechanism to address voting rights violations more efficiently.
Chair NADLER. Thank you very much.
Mr. Chair, I yield back.
Mr. COHEN. Thank you.
I would now like to recognize a Republican. Is there a Republican who is with us and wants to be recognized?
[No response.]
If not, I would remind people that Everett Dirksen sponsored the Voting Rights Act, again, and led the cloture vote, the first time
ever a civil rights bill had been stopped by cloture. Because, for years, the filibuster was there to defeat civil rights laws. That is why it was founded. That is why it was started. Even Yale has taken John Calhoun's name out of its history, off its dorm, and into the dust bed of history.

I now recognize for questioning Mr. Raskin. Is Mr. Raskin with us?

[No response.]

I think I will go to Mr. Hank Johnson. I saw him on the screen. Is Mr. Johnson still with us? Mr. Johnson?

He is walking. So, he must have voted.

So, we will go to Ms. Garcia of Texas, Ms. Sylvia Garcia from the great State—I am not going to say that—from Texas.

Ms. GARCIA. Well, thank you so much, Mr. Chair, and thank you for, once again, bringing this very critical matter to our attention. I am not one that is complaining about the seven hearings that we have had. I am not the one complainng of putting more and more attention. It really is a time for action and a time for legislation. So, thank you again.

This is actually something that is really dear to my heart because many of the items that we have been talking about are items that have stemmed from the State of Texas.

As we all know, our democracy is built on the sacred principle that every American has an equal and fair right to vote. States like my home State of Texas are imposing laws that are already limiting that sacred right. Texas and other States continue to pass laws that suppress, silence, and dilute minority voters, especially Latinos. We cannot let this stand. We must take action. It is our responsibility, our duty, to protect voting rights for every American, no matter what their ZIP code, where they live, or what language they speak. By banning partisan gerrymandering and creating new protections for voters, we will ensure every American can make their voice heard.

History has shown us that Texas and Texas Republicans have gone to much length in the past, and continue to do that, to suppress votes. I disagree with my colleague from Texas from the other side of the aisle; suppression is alive and well in Texas, whether or not you want to admit it. For decades, Republicans have split up and packed communities of color to dilute their vote and suppress their vote.

As was mentioned in the Chair's remarks earlier, in Texas, 95 percent of the growth in Texas was due to people of color, predominantly Latino. Yet, all the districts that were created were created for Republican White voting districts.

So, I want to start with Mr. Saenz. Mr. Saenz, you and I worked together on many of these issues for a long time. Tell us how changes in the Voting Rights Act would protect us and prevent a legislature from doing what they did this last time, where, even though the population growth was people of color, their results were that they packed Democrats into districts and created more White Republican districts.

Mr. SaENZ. Absolutely. As I mentioned in my testimony, we have seen in three different States a total of 18 lost Latino majority districts. 10 of those come out of Texas. That is despite, as you know,
half of the growth of the State being Latino in the last decade. Those 10 lost seats are in Congress, State House, State Senate, and on the State Board of Education.

How a reinvigorated Voting Rights Act through the John Lewis Act would address that is clear. Texas would be required, under the John Lewis Act, under both the geographic preclearance formula and the known practices coverage formula, would be required to submit its redistricting statewide for prereview and preclearance either by the Department of Justice or, as you know, as Texas has decided on several occasions in the past, by a three-judge District Court in Washington, DC.

That would efficiently determine whether there was retrogression, as there clearly has been from the maps adopted this year, or last year rather, and whether there has been intentional voter discrimination, as Texas has been adjudicated over several redistricting amendments. So, instead of being mired in litigation, because of the delay in Census data and because of your early primary in Texas, it will not be resolved before the 2022 primary elections move forward. Instead, we would have preclearance, very efficiently and effectively preventing these violative redistricting lines from ever taking effect, that result today because of the failure of the Senate to enact the John Lewis Act. It means that we will have in 2022 these violative lines in place in Texas.

Ms. GARCIA. Thank you.

Mr. Chair, I only have like 40 seconds. I will yield my 40 seconds to my colleague and friend, Lucy McBath, when her time comes at the end of the hearing.

Mr. COHEN. Ms. McBath’s has already spoken. If she would like some more time, she is certainly—

Ms. GARCIA. Oh, I want to apologize. I was on the floor and I did not know that. I thought she was going to be left for the end of the hearing, as you stated. So, if she wants 40 seconds, she can have them.

Mr. COHEN. Well, let me ask Ms. McBath a question, and you have got 40 seconds.

In redistricting in Georgia, what did they do with your district?

Ms. McBATH. Well, thank you so much for the time to explain. District 6 is the district in Georgia that needed to change the least. So, what they actually have done, they have taken a Biden-plus–11 district and they swung it 26 points to Trump. It is now a Trump–15 district. They have taken out of my existing district most of the diverse and Democratic voting blocks and have shuffled in very conservative and Trump and red voting blocks.

That was deliberate. I have always been the top target by the Republican Party here in Georgia. Being the Member that sits in the seat that was once held by Newt Gingrich—and I am the first minority in the history of Georgia to ever sit in this seat, the first Democrat since 1979—I have always been the target.

So, what they have done is taken two swing districts, District 6 and 7, and they have created a new Democratic open seat, District 7, but they have done what we know to be cracking and packing.

Mr. COHEN. Thank you, Ms. McBath. I am just shocked by the fact that Mr. Roy said that didn’t happen and doesn’t exist.

Ms. McBATH. It does.
Mr. COHEN. Ms. Garcia, it is your time, and I guess you have to yield it because your five minutes are up. Thank you, Ms. Garcia. Next, we go to a Republican. Is there a Republican with us?

[No response.]

They still have not come back.

Mr. Hank Johnson of Georgia, would you like to take your five minutes at this time?

Mr. JOHNSON of Georgia. Thank you, Mr. Chair, and, yes, I would.

Thank you for holding this very important hearing. Voting rights is not going away, even though the Senate last night failed to do what it should have done.

In some respects, we can call it a racist Senate, the same way that we can talk about racism when it comes to my colleagues on the other side of the aisle making statements today about Black people and Democrats race-baiting. It is like, when you mention about how much of racism still exists in the soil of America, they want to plant their heads in that soil and refuse to acknowledge what is in the soil.

They have been emboldened now, Mr. Chair. My colleague from Texas I am sure would not have felt comfortable in talking like he spoke three or four years ago. Because of—

Mr. COHEN. Mr. Roy is back. He is back with us now, a Republican being with us. I just want to make that announcement.

Mr. JOHNSON of Georgia. Well, good.

Because of the election of Donald Trump and the Make America White Again movement, he feels empowered to be able to say what he wants to say. He knows that it is wrong, but he feels entitled. He feels privileged. It is White privilege; it is White power that allows him to say what he said. I am just blown away by where we have fallen in our discourse on this Committee.

At any rate, we heard about—Mr. Henderson, I would like to ask you. Georgia is one of the nation’s fastest-growing States, and this growth has largely been driven by people of color. Over the last decade, Georgia’s Black population grew by 16 percent, almost half a million people, while the population of White Georgians has decreased. Yet, the new legislative maps do not reflect this tremendous growth of Georgia’s Black population.

Mr. Henderson, the Supreme Court has declared partisan gerrymandering challenges a nonjusticiable political question. It has continuously held that States may not engage in intentional racial gerrymandering, is that correct?

Mr. HENDERSON. That is correct, Mr. Johnson. That is correct.

Mr. JOHNSON of Georgia. To be clear, district maps are presumptively unconstitutional when race is the predominant motivating factor in the legislature’s redrawing of congressional and legislative maps, correct?

Mr. HENDERSON. That is also correct.

Mr. JOHNSON of Georgia. How are you able to show race as a motivating factor?

Mr. HENDERSON. Thank you for the question.

My colleague, Tom Saenz, who represents MALDEF, I thought ably answered that question in response to an earlier inquiry. It is extremely difficult to establish the fact pattern necessary to show
that redistricting was based exclusively on race or predominantly on race. It makes challenging redistricting in a way that would show racial gerrymandering extremely difficult to accomplish. One has to look at the totality of circumstances and deduce from those circumstances that race was the predominant factor, and that is extremely hard to do.

I am now quite familiar with what is going on in Arizona because, in a meeting recently with Senator Sinema, to point out why having a debate on voting rights was so necessary, we pointed out the demographic changes that have taken place in that State over the past 10 years. We pointed out the fact that, since the Shelby County decision, 320 polling places in Arizona were closed. Seventy percent of polling places in Maricopa County, the most diverse county in the State, have been closed. At the same time, the legislature adopted recently a limitation on mail-in voting, which Arizonans used, 80 percent of the population.

When you combine those factors together, the heavy reliance on mail-in balloting, the closure of polling places, and restrictions that affect Native American households because of their lack of mailing addresses, other information; when you look at the attacks on election workers that have occurred in the aftermath of the 2020 election, and the fraudulent review of voting procedures conducted by the so-called “Cyber Ninjas” in Arizona, the first of its kind, the totality of circumstances lays the foundation which allows you to help evaluate both what is happening in the election process and the gerrymandering circumstances.

Others may be familiar with Georgia specifically.

Mr. COHEN. Mr. Johnson, your time is up, I believe.

Mr. JOHNSON of Georgia. Thank you, Mr. Chair.

I would just leave with the fact that it would only be—well, it would be only six blind mice on the Supreme Court who could not be able to look through the facade and under a totality of the circumstances rule correctly. I am not confident that will happen.

With that, I yield back. Thank you.

Mr. COHEN. Thank you, sir.

We are now at an unusual time in our hearing, in that we have—Mr. Garcia, can you hear me?

Mr. GARCIA. Yes, I can.

Mr. COHEN. All right. Mr. Garcia, who could not testify because he had technicalities, is now with us. I will yield to the desires of the minority who are with us now, Mr. Johnson, the Ranking Member, and Mr. Roy, the Acting Ranking Member. Would you like for Mr. Garcia to proceed with his testimony now or would you prefer that we wait until after you have your opportunity to question Witnesses, each of you. Or what would be your preference? I don’t want to discriminate—

Mr. ROY. I would defer to my colleague from Louisiana. My instinct would be to allow the Witness, out of deference and respect for his time, to allow the Witness to go ahead and testify, and then, we will be happy to join in after.

I apologize. I don’t proxy vote. I was down on the floor of the House. So, sorry I wasn’t back here.

Mr. COHEN. Thank you, Mr. Roy.
Mr. Johnson, is that okay with you, to have Mr. Garcia testify now?

Mr. JOHNSON of Louisiana. Perfectly fine, my friend.

Then, let me just say briefly, my staff told me that you were making some comments about Republicans not being on, but we were, as you know, in the middle of a vote series, and we don't vote by proxy. So, we had to be on the floor.

So, I am happy to let Mr. Garcia testify. Go ahead.

Mr. COHEN. Thank you, Mr. Johnson.

Many of you do vote by proxy, though. You just have a lawsuit, but many of you do use that.

Mr. Garcia, you are to be recognized now. I don’t have my material before me. I know you represent LULAC, and you have represented them over the years. You are recognized for five minutes, sir.

STATEMENT OF DOMINGO GARCIA

Mr. GARCIA. Thank you.

My name is Domingo Garcia, and I am from Dallas, Texas. I am the National President of LULAC, the League of United Latin American Citizens, the nation’s oldest Latino civil rights organization and the largest.

We are here because, unfortunately, since 1970, we have had to file suits in Texas and all over the country to protect the voting rights of Mexican Americans and Latinos throughout the United States and Puerto Rico.

I am going to talk to you a little bit primarily about Texas. From 2010–2020, 90 percent of the population growth in Texas was predominantly Latino and people of color. As a result of that, Texas was the only State that got two congressional districts. We would have assumed that, because of the large Latino growth, that we would have had two Latino-opportunity Congressional Districts in Texas. After the meetings of the Texas legislature—I testified there; we gave the numbers—even though Latino districts could have been created in Dallas—Fort Worth; in Harris County, Houston, and in South Central Texas around Austin—San Antonio, no districts were created.

Literally, you could have just made squares; you could have made triangles, and you would have created Latino-opportunity districts, because we are, Texas is now a majority-minority State, one of only six in the country. That didn’t happen.

What happened was you had extreme weaponization of gerrymandering for political purposes. So, whether it is Democrats doing it to the Republicans, or Republicans doing it to the Democrats, our concern is just that everybody has a seat or an opportunity to have a seat at the table. That did not occur during this congressional redistricting in Texas.

As a result, we believe that the plans that were adopted by Texas in regard to Congress, the State Senate, the State House, and the State Board of Education were intentionally discriminatory. You have to go out of your way and create wiggle lines, the gerrymandering that we learn about in social studies courses about
what used to happen in the 1890s in New York. Well, that is happen-
ing in 2022 in Texas.

We believe that the only way we can protect the voting rights of
Latinos, African Americans, and Native Americans in the entire
country is by passing protections that will take care of Latinos.

For example, Congressman Roy, I know you are from Texas.
Look, I was a former State Representative. Texas had an only-
White primary. Texas had a poll tax that my grandfather paid, be-
cause you had to pay, I believe, $2.50 at that time—and it has
grown to about 20 bucks today—to vote. That was to intentionally
keep people, Black and Brown people from voting.

Literacy tests were passed to make sure that, if you couldn’t read
or write the Texas Constitution verbatim, you couldn’t vote. Okay?
That was a test. How many jelly beans in a jar—to do math. All
those happened.

When we see voter ID, when you see all these efforts to stop peo-
ple from voting, think about this, what happened in Texas was we
used to have every senior in Harris County got an application, not
a ballot, just an application. The Texas legislature passed a law
saying: No, you know what? You can’t do that. You can’t get more
people to vote. We have got to restrict the number of people that
vote.

We can’t have 24-hour voting, so that people that are working
third and fourth shifts, primarily poor working people, can have an
opportunity to vote, just like more well-off, middle-class people. No,
we are going to stop that.

By the way, I am in Dallas County. If I go register somebody to
vote in San Antonio, Austin, or Houston, I commit a felony. If I
help my neighbor, a senior, vote by mail, and I help them fill out
the ballot because maybe they are bedridden or maybe their eyes
are not—I commit a felon. That is what we have come to in
Texas—the criminalization of voting, to make it so difficult that
they have to rig the system, instead of going for the hearts and
minds of voters.

The fact of the matter is Latinos are pretty much an independent
group. We are socially conservative. We are pro-police. We are pro-
ICE. We are split on abortion. Republicans have made inroads.

You can’t rig the system like we saw. In the State Senate, there
are no Latinos from Dallas County, and we have the largest Latino
population, without a Congressional District or a State Senate Dis-
trict. In the State House, there could have been additional Latino
districts created in Midland and Ector County, Tarrant County,
Harris County, and Caldwell County. None of that happened.

That is why we believe that we are asking that a voting rights
bill be passed to protect the rights of every citizen to have a fair
shot at voting, and that is not what we are seeing today in Texas.

By the way, LULAC is involved in litigation in Iowa, Arizona,
Florida. Because, unfortunately, again, we are seeing these voter
suppression tactics to keep Jose and Maria, and everybody else
that may be with a last name like Garcia, from voting, or making
it so difficult that the numbers go down.

Already, we see numbers, like for mail ballots, 50 percent of the
mail ballots in Travis County have been rejected. Why? Because,
for the first time, Texas required that you add your Social Security
number or your driver’s license to your application. Many seniors are forgetting to do that, and therefore, their mail ballots are being rejected. So, it is a—

Mr. COHEN. Thank you, Mr. Garcia. We thank you for getting your technology corrected, and we appreciate your testimony.

I want to thank Mr. Roy for his courtesies in allowing you to testify at that point, which I think was appropriate.

[The statement of Mr. Garcia follows:]
Domingo Garcia
LULAC National President
January 20, 2022

Hearing: Voter Suppression and Continuing Threats to Democracy.
LULAC Plaintiffs assert that the redistricting plans enacted by the 87th Texas Legislature for the Texas House of Representatives ("Texas House"), Texas Senate, Texas State Board of Education ("SBOE") and Congress violate the United States Constitution and the Voting Rights Act of 1965.

Regarding the newly enacted Texas House plan, LULAC Plaintiffs contend that Defendants failed to create an additional Latino citizen voting age majority district in (1) Harris County, (2) the geographic area including portions of Caldwell, Hays and Travis counties and (3) the geographic area including portions of Ector and Midland counties. LULAC Plaintiffs also assert that Defendants purposefully manipulated district boundaries to weaken Latino voting strength, such that Latinos lack the ability to elect their preferred candidates in House Districts 31, 37 and 118. Additionally, LULAC Plaintiffs allege that Defendants systematically and deliberately malapportioned districts in West Texas to favor voters of certain regions at the expense of voters in other regions, and to favor Anglo voters at the expense of Latino voters.

Regarding the newly enacted Texas Senate plan, LULAC Plaintiffs contend that Defendants failed to create additional Latino citizen voting age majority districts in (1) the geographic area including portions of Dallas and Tarrant counties and (2) the geographic area including portions of Bexar, Hays, Caldwell, Guadalupe, Comal and Travis counties. LULAC Plaintiffs also assert that Defendants manipulated district boundaries in Senate District 27 with the purpose of reducing Latino voting strength and making it more difficult for Latinos to elect their preferred candidates.

Regarding the newly enacted Texas SBOE plan, LULAC Plaintiffs contend that Defendants failed to create an additional Latino citizen voting age majority district in Harris County. LULAC Plaintiffs also assert that Defendants manipulated the district boundaries of
SBOE District 3 with the purpose of reducing Latino voting strength and making it more difficult for Latinos to elect their preferred candidates. Additionally, LULAC Plaintiffs allege that Defendants manipulated district boundaries in South Texas to limit Latino electoral opportunity in SBOE Districts 2 and 3.

Regarding the newly enacted congressional plan, LULAC Plaintiffs contend that Defendants failed to create additional Latino citizen voting age majority districts in (1) the geographic area including portions of Dallas and Tarrant counties, (2) Harris County, (3) south/central Texas, including portions of Nueces, San Patricio, Bee, Goliad, Karnes, Gonzales, Caldwell, Bastrop and Travis counties and (4) the geographic area of enacted Congressional District 35. LULAC Plaintiffs also assert that Defendants purposefully manipulated district boundaries to weaken Latino voting strength in Congressional District 23, such that Latinos lack the ability to elect their preferred candidates. Finally, LULAC Plaintiffs allege that Defendants manipulated district boundaries in Congressional District 15 with the purpose of reducing Latino voting strength and making it more difficult for Latinos to elect their preferred candidates.
Mr. COHEN. Now which, Mr. Johnson or Mr. Roy? Whoever you choose will go first.

Mr. ROY. All right. Well, I thank the Chair. I have a few questions I was going to ask, but I feel compelled to address a few of the things that have been discussed, in part, probably somewhat in my absence, and I get, understand why that’s the case. I said I was on the floor voting.

We’re talking about proxy voting. It’s not just about a lawsuit. Some of us believe that it is unconstitutional and wrong to proxy vote. We can disagree on that, but I have put my money where my mouth is and I’m not voting by proxy.

That has caused all sorts of complications in my existence in a world where the Congress is continuing to vote by proxy. I’ve got competing engagements and I can’t multitask if I’m voting in person. So, that is a real issue, and we ought to address it, and I think it’s tearing apart the House of Representatives.

I would also note that my colleague Mr. Johnson, comma Hank, not Mike, was making some comments about my alleged White privilege. I think it would be noteworthy, were my grandmother still alive, who was raised in west Texas to a single mom in a house with dirt and no indoor plumbing and my grandfather who was the same.

My grandmother’s father, who was an orphan as a result of, we believe, not going to claim any percentage of Native American lineage. We believe by a family passing down that was the case, and that was a part of his reason for being an orphan. Growing up dirt poor during the depression. My great-grandfather losing the farm. Then my dad working hard and going to college despite having polio, which I know the Chair can very much relate with.

I would question the assertion of my, quote, “privilege and White power.” That I wouldn’t comment on the absurdity of these race-based focus with respect to legislation on elections when I’ve been doing so my entire my life.

Including being a lawyer on the Senate Judiciary Committee when I worked hard for Senator Cornyn when we were working on the legislation of the Voting Rights Act of 2006, which has been referenced here, to make very clear that it was clearly unconstitutional.

That the data that is being based on was 1968 data. That the case was not made for the reauthorization of section 5 to be applied to the districts according to a formula that is 50 years old. That it was clear it would be tossed out on its head. That it was then therefore tossed out on its head in 2013.

I’m proud to have taken part in helping draft the minority views, additional views, to the record to make the case. Because it was wrong. It was wrong then, and it would be wrong now. That’s the reality.

The former Representative Garcia, and I’m glad to have you here and I was happy to defer to you to offer your testimony. When we’re talking about Texas law, I hear you, okay, and I’ve talked to many people experience those issues with respect to the horrors of poll taxes and literacy tests and what that meant to disenfranchise voters.
Now, you're comparing that and analogizing. You made the case, sir, of what we're saying. You're making the case in analogizing it to voter identification. Yes, voter ID is a necessary tool for ensuring the integrity of ballots and election, particularly in Texas, where our borders are wide open right now.

We've literally had a million people come to the United States and be released into the United States over the last year due to the complete and utter incompetence, and not just incompetence but malicious refusal to actually enforce the laws of the United States, to know who's in the United States.

The rationale for having voter ID is being made by the very Administration who's accusing States of being racist for wanting to have voter identification to ensure the integrity of elections when they refuse to defend the sovereignty of the United States. Those are the facts. We know what the numbers are in Texas, and we see what's actually happened.

A final point on the gentleman's commentary about Mr. Charlie Sifford, who I believe passed away this last year. I'm trying to remember my timeline, but was obviously noteworthy for being, and some people would call the Jackie Robinson of golf. We're not here to talk about golf, but I do want to raise an issue.

When I was in college and was a walk-on on the golf team in college, there was a young man who was a dear friend who has since passed away, unfortunately from meningitis, viral meningitis while he was playing on the Canadian tour trying to make it, Lewis Chitengwa.

He was the first Black to win the South African Open, and he was my dear friend. He broke that color barrier. We would talk at length. Yes, he, like other Black Americans, faced racism in 1990s in Virginia, and we'd have conversations about that.

You want to talk about privilege, he would talk extensively about the privilege of being an American and the privilege of what it means to be an American and having faced what he faced in Zimbabwe and going over and winning the tournament in South Africa.

I know my time is up, Mr. Chair. I'd like to try to keep to the clock. I'm well aware of the importance of these issues. I come at it from a very different perspective, however, about the integrity of the elections and not using race for political purposes.

One final point, and I know I'm over my time and appreciate the indulgence, is that with respect to the—I'm sorry, I lost my train of thought. I had another point. So, I'll defer and yield back to the Chair.

Mr. COHEN. Thank you, Mr. Roy. If you come back with your thought, I'll give you an opportunity to express it.

Mr. ROY. Thank you, sir.

Mr. COHEN. Ms. Ross has got time, Mr. Raskin has seniority, but I'm going to recognize Ms. Ross because she has set a John Kennedy picture in the screen, and I think Mr. Raskin is great batting cleanup.

Ms. Ross, you're recognized for five minutes.

Ms. ROSS. Well, thank you, Mr. Chair. Just wanted Mr. Raskin to know that I got my copy of Vogue Magazine today with the big feature on him and his book and his family. He is not only an ex-
cellent Member of the Committee, but a celebrity in Vogue now, so congratulations to him for that.

I also want to thank everybody who came to testify today. This is such an important issue. Right now, it is front of mind for the American people because of what’s going on the Senate side. In North Carolina, it has been front of mind for centuries.

I’m a former civil rights attorney and a State legislator from North Carolina, and I’ve witnessed first-hand efforts to reduce the power of minority voters in my home State through racial gerrymandering and voter suppression laws.

Last week, a three-judge panel upheld North Carolina’s new maps for U.S. Congress, the North Carolina Senate, and the North Carolina General Assembly. These maps are intended to further reduce Democratic representation, an outcome that’s also likely to dilute the power of minority voters and reduce minority representation at both the State and Federal level.

While this is not the outcome I had hoped for, the panel did establish key findings about the unequal nature of these maps and laid the foundation for the State Supreme Court to rule against partisan gerrymandering on appeal, under the State constitution.

The recent efforts in my State to undermine the continuance of American democracy highlight the importance of passing Federal voting rights legislation to ensure that our governing institutions reflect the diverse communities they represent. It’s consistent with our history.

Finally, I want to correct a misconception that Members of both parties have that expanding voting rights only helps Democrats at the ballot box. In 2020, North Carolina offered the longest voting period in the country, largely because we’re a military State. The State Board of Elections mailed absentee ballots 60 days before the November 3 election, earlier than any State.

In-person early voting was open for 19 days prior to the election, and same-day voter registration was allowed at all early voting locations, because of a bill that I worked on when I was in the State legislature. Because our State made voting so convenient, North Carolina saw record voter turnout in 2020, with 75 percent of voters casting ballots.

Because of, not despite, the ease of access to the ballots, Republicans secured victories across the State, including Donald Trump. North Carolina’s experience shows that progressive voting laws do not uniformly benefit Democrats and disadvantage Republicans.

Instead, they serve the interests of candidates from both parties who can most effectively energize and inspire our State’s closely divided electorate.

My question is for both Sherrilyn Ifill and Derrick Johnson. Please describe the impact of North Carolina’s congressional and legislative maps, the current ones, on the voting rights of minority citizens.

Ms. Ifill. Thank you very much for the—for the question. I will concede that LDF has not mounted a challenge around the North Carolina congressional maps, although I am familiar with what you have described. It very much reflects what we are seeing in multiple States.
We heard reference to it in Georgia from Representative McBath. We are seeing this in Alabama. We’ve seen this in South Carolina. We’re closely watching Louisiana, where Members of the LDF staff are today, testifying in Baton Rouge. That is the growth in the Black and Latino population in these States, and I guess Tom Saenz referenced this as well, is not being reflected in the congressional maps that are being drawn.

This is the equivalent of erasing our population and the representation to which they are entitled and deserve. As I said earlier, this is not only at the congressional level, it’s not only at the State house level, but we’re also seeing it in county commission races, in judicial districts, in school board districts as well.

This is what the project really has been about. We all know that gerrymandered maps get grandfathered from decade to decade. They constitute what becomes a permanent lockout or a permanent diminution of voting strength for racial minorities.

So, when we see this going forward, when we see the failure to take account of the population increases that have happened, largely racial minority population increases within these maps, this is directly a threat to the full citizenship and representation of people who have a right to have their numbers properly reflected in districting maps.

This work this year, that’s what it’s all about, it’s about ensuring that we can try and—

Mr. COHEN. Ms. Ifill, our time is up.

Ms. I FILL. Reverse the gerrymandered districts that have shut our communities out of full voting strength for now decades.

Ms. ROSS. Thank you, and I yield back.

Mr. COHEN. Thank you, Ms. Ross, I appreciate it. Now, I’d like to recognize Mr. Johnson for five minutes.

Mr. JOHNSON of Louisiana. Thank you, Mr. Chair. I apologize, we’ve been in and out, as Mr. Roy explained. Neither he nor I, many of our colleagues, Republican side, have voted proxy, and we do believe it’s unconstitutional.

We’re litigating that, as you know. I think it would have been an appropriate subject for our Committee to hear at some point, but it was not to occur. So, apologize for being in and out today.

Look, I have lost count on our Constitution Subcommittee, but this may be the seventh hearing I think that we’ve had on this subject in the last year. Listen, the integrity of our election system is of critical importance. I mean, we all agree on that.

I know that people try to make this a partisan thing, but it should not be. Every Republican that I know, and I’m a former State legislator in Louisiana, I know many legislators on the Republican side around the country at the State level, and of course everyone here in Congress, all my constituents, the party activists, every single Republican that I know wants every eligible voter to participate in our elections.

See, the thing about our party is we believe in the original principles of our nation, the foundational principles. We know that free and fair elections are central to all that.

So, all the claims that are made, these wild accusations about the supposed intentions of Republican lawmakers around the country are just completely unfounded. You ought to take some time to
go talk with these folks and see what they’re really about, and what they’re trying to accomplish.

The Democrats in Congress are seeking to commandeer the State redistricting processes to enrich themselves politically. I mean, it’s just—it’s brazenly political, and it’s obvious to anybody who looks into this.

I mean, Washington Democrats are politicizing the VRA, the Voting Rights Act, by seeking to overturn common sense and lawful State election integrity reforms. Look at the example in Georgia. It’s been discussed today from mostly one side.

The Biden Department of Justice filed suit against the State of Georgia over that new election law, SB 202. That law, anybody at home can Google this and research it for themself. Don’t listen to what pundits and supposed experts are saying about it, look at the law.

It strengthens ballot box protections. It enhances the State’s election integrity. That’s why it was popularly supported there.

One of the experts who’s testified in this Committee on election laws stated that the DOJ’s complaint, the lawsuit that the Biden Administration filed against that Georgia law, quote, “Reads more like a press release from the Democratic National Committee than a serious lawsuit by an apolitical Justice Department,” unquote.

This is the theme that we’ve returned to over and over in this year. When we had Attorney General Merrick Garland before us and all the other hearings that we’ve had on these subjects and others related to it, the people are losing faith not only in our election system, for all the accusations that are flying back and forth.

More importantly than that, perhaps, in our entire system of justice, they’re losing faith in our institutions. The idea that there is equal justice under law, that justice is blind, because they’re seeing the Department of Justice being weaponized for political purposes.

That is something that should greatly concern us. All this is being done for politics in Washington, and it’s a shame. It violates our constitutional order; it violates our principles. It is the States that have the authority to do these things.

The Supreme Court has ruled recently, we’ve covered this ad nauseam, that the conditions that existed in 1965 simply do not exist today. There is no evidence of widespread voter suppression or voter discrimination, or any of that. This is not about race at all.

The legislators that I know, the ones that are working in all these States, Republican and Democrat, are trying to ensure that the elections are fair and free so that the people do not lose their faith in the integrity of the ballot box. If we lose that, y’all, we lose everything, and everybody should agree with that.

Only have one minute left, maybe I’ll ask our minority Witness Ms. Riordan if there’s anything that’s been said that she’d like to comment on, because I know she may not have another opportunity. I’ll give the time to her.

Ms. RIORDAN. Well, thank you for that. I just want to say that I really think that in my experience within the Justice Department, the amount of cases that we reviewed during the time that I was there doing sector 5 from 2000–2013, when the Shelby County decision was made, the amount of objections that we had at
time, Congressman, was .36 of one percent of all the submissions that were submitted.

What people don’t realize is the amount of work that goes into making a submission to the Department of Justice, and then the politics that are played by the Department in reviewing them.

I don’t make those accusations lightly. I find it to be very disheartening. I will say that I don’t believe that their actions in the past justified them getting that type of control over State election law again.

Mr. JOHNSON of Louisiana. Very well said and I yield back. Thank you, Mr. Chair.

Mr. COHEN. Thank you, Mr. Johnson. I don’t think you were here when I told you the people about Everett Dirksen, who’s over my head and behind me. He had that argument made in 1964 by Southern legislators that it was up to the States.

He worked out compromises to make it acceptable to them, but still none of them voted for the Civil Rights or the Voting Rights Act, which Everett Dirksen did and all the Republicans did then when it was the party of Lincoln.

I now yield—Jamie, you’re not going to be our cleanup hitter because we now have two other powerful hitters, Ms. Bush and Ms. Jackson-Lee, but you’re going to go at this present time. I recognize the Honorable Jamie Raskin for five minutes.

Mr. RASKIN. Mr. Chair, thank you very much. Before I begin, did Ms. McBath want to take a moment, or—

Mr. COHEN. She’s spoken twice, thank you. She was recognized, but thank you for your offer.

Mr. RASKIN. I heard my friend, Mr. Roy, right when I got back to the office, unfortunately, I didn’t hear what prompted him to launch into a defense of his family and so on. I was moved by what he had to say.

It reminded me that American history has been transformed by coalitions between African Americans and Members of other disadvantaged minority groups and working class White people, who also have been targeted for political exclusion and disenfranchisement.

I’m just wondering whether, Ms. Ifill or Mr. Saenz would want to opine about there are certain disenfranchising mechanisms, like the White primaries in Texas the subject of *Smith v. Allwright* and *Terry v. Adams*, which were racially specific.

Literacy tests I think were used that way, but there also were a bunch of them that were targeted at both the African American population and the White working class. Like poll taxes I think were imposed across the board.

I just wonder, I’m not quite sure what got Mr. Roy upset about what someone had said, but I don’t think anybody would deny that there has White people disenfranchised, certainly under the wealth and property qualifications that America began with.

What we’re fighting for is universal voting rights for everybody. So, I don’t know, Ms. Ifill, Mr. Saenz, do you have any comment on that?

Ms. IFILL. Yeah, let me see if I can do this very quickly, because Congressman Raskin, and thank you for the question. I feel I must
respond to Congressman Johnson about the supposed frivolity of lawsuits challenging the Georgia voter suppression law.

LDF is challenging the voter suppression law. We’re also challenging the voter suppression law in Florida. In both cases, the judge in Georgia, a Trump appointee, has denied the State’s motion to dismiss. Which tells you that these are not frivolous claims, these are not press releases. These are legitimate cases that will go forward, and the courts will decide the strength of those claims.

Congressman Raskin, absolutely, and certainly many of the provisions that we think about, automatic voter registration, absentee voting, when we talk about drop boxes outside the board of elections, the people they most benefit are those that are disabled and the elderly. We should be expanding the vote for everyone.

Texas’s voter ID law that we successfully challenged, our client in that case was a student at a Texas State University who could no longer use her student ID to vote, but of course could if she had concealed gun carry permit.

That also doesn’t mean that we deny the targeting of Black and Brown voters that has happened in this country since we received the right to vote after the 13th, 14th, and 15th Amendment.

The Voting Rights Act was designed to address that for a reason. We can’t deny that history simply by pointing to the fact that there has been widespread oppression across the board of many people without wealth.

Mr. RASKIN. Thank you so much for that. Mr. Saenz, did you want to add anything to that?

Mr. SAENZ. No, I would just add that your point is absolutely accurate. Voting rights laws benefit everyone. We see collateral disenfranchise when it comes to voter ID, which often a very significant impact based on class and economics.

In Arizona, we found that the attempt to restrict voter registration, new registrant being required to produce a birth certificate, other proof of citizenship, had effects on young voters of all races who were choosing to register for the first time, and on the elderly, who had difficulty obtaining the proof of their citizenship.

So, it is absolutely true that there are collateral disenfranchising, that voting rights laws, like all civil rights laws, benefit every American.

Mr. RASKIN. I think we’re in this situation today because of the Supreme Court’s successful efforts to gut the Voting Right Act in *Shelby County v. Holder* and the *Brnovich* decision. There’s been a war from the bench against the Voting Rights Act, against civil rights legislation generally.

Are we at a point when we can recognize that Federal statutes, including the most powerful voting rights statute we ever had, the Voting Rights of ’65, are not enough and we need a constitutional amendment guaranteeing the right to vote? Because all we’ve got is sort of a ragtag sequence of antidiscrimination amendments.

You can’t discriminate on the basis of race, the 15th Amendment on the basis of gender, the 19th Amendment is on—nowhere do you have what exists in most democratic constitutions, which is a universal grant of the right to vote to all citizens at every level of government.
Is it time for us to do that? Mr. Henderson, let me start with you.

Mr. HENDERSON. Thank you, Mr. Raskin, for the question. It's a very important question, and I believe you are right, that a constitutional amendment guaranteeing the right to vote for all American citizens would be a powerful tool that would help resolve many of the disputes that we are talking about now.

Having said that, the likely adopting and ratification of such an amendment is virtually impossible. One need only look at what's going on now with an effort to restore the Voting Rights Act of 1965 based on the requirements imposed by the Supreme Court in the *Shelby County* decision.

Many of us believe that the Court offered a roadmap to the appropriate reauthorization of that act, even if we disagreed with the holding itself.

There are some who suggest that the Court cynically established a challenge which it knew quite well it would be impossible to achieve, based on the fact that there was inherent skepticism about the effort to really establish the existence of discrimination.

We think the House Judiciary Committee and the Senate have helped modernize the formula that the court required be considered in an update of the Voting Rights Act.

Mr. RASKIN. Okay, if I could pause you there, Mr. Henderson, I just wanted to ask the minority Witness whether you would agree to a constitutional amendment establishing a right to all citizens to vote, Ms. Riordan.

Ms. RIORDAN. Yes, I would.

Mr. RASKIN. So, and that I think would be the best answer, Mr. Henderson. Maybe we could get people together around the principle of a constitutional right to vote. I yield back, Mr. Chair, thank you for your indulgence.

Mr. COHEN. Thank you, Mr. Raskin, I appreciate it.

Mr. COHEN. Roy, are you with us again? I see your cameras on. If not, I was going to let him out of the sand trap that he was in when he left us. So, Mr. Johnson, do you have any other Republicans there?

Mr. JOHNSON of Louisiana. I don't believe so, no.

Mr. COHEN. Okay, well, let's go next, I guess to Ms. Bush. Ms. Bush, you're recognized for five minutes.

Ms. BUSH. St. Louis and I thank you, Chair Cohen, for convening this important hearing.

We are all in the midst of a moral crisis, and we know that. Last night, the nation watched as the United States Senate failed to advance legislation that would protect our fundamental and constitutional right to vote. For what? Because of fear, White fear. Because of power, White power.

Fear that if and when we empower Black people, that will somehow disempower White people. That if we empower Brown people, the Brown community, that will somehow disempower White people.

White people, especially White wealthy people, have long exercised control over our democracy, because the mere idea of Black folks possessing even an ounce of political power is viewed as a threat to the status quo.
So, to those apathetic White folks who have yet to welcome love and welcome anti-racism into your hearts, my question for you is this: What are you afraid of? Are you afraid that we will end red-lining? Are you afraid that we will deliver universal healthcare?

Are you afraid that we will end police violence? That we will end the racial and gender wealth gaps? That we will provide safe housing for every single member of our unhoused community? That we will end our forever wars? Are you afraid that we will end mass criminalization? Are you afraid that we will dismantle the comfy White supremacy that many benefit from? Because that’s the world I want to live in, and that’s the world we should all want to live in.

W.E.B. Du Bois once wrote, “If there was one thing South Carolina feared more than bad Negro government, it was good Negro government.” Perhaps this here is the fear, fear that we will build the kind of political power that is just, that is equitable, and that will lead to transformative policy change.

Mr. Henderson, can you please explain how current voting rights challenges, if left unaddressed, are not only a danger to the participation of Black communities, but also a danger to the overall health of our democracy?

Mr. Henderson. Thank you, Congresswoman Bush, for your question, and you are absolutely right. African American voters historically have been the canary in the mine. Their treatment as a group has helped establish the standard by which we evaluate voting rights on behalf of all our citizens.

Obviously, a recognition that other groups have experienced discrimination is important. I think Tom Saenz and others have established the effect of discrimination on Latino voters. We’ve seen the same with Asian American and Native American voters. Subgroups like individuals with disabilities and older Americans will often face challenges.

However, the use of racial considerations in trying to decide who is entitled to vote has created a pernicious system that indeed, as now being assembled, does reflect what I think is a Jim Crow 2.0. I know Mr. Nobile disagrees with that characterization, but I think there is ample justification for the use of that term, and it is not hyperbolic.

My own sense is that democracy is very much imperiled right now. I think we have seen that in very significant ways, and I think the failure to enhance protections for all voters, as has been noted previously, will undercut the power of American democracy to survive the challenges we face today.

Ms. Bush. Thank you so much, Mr. Henderson, and thank you for all your work. Yes, this here Black woman would characterize it as a Jim Crow 2.0.

Ms. Ifill, the Legal Defense Fund has done significant work to end prison-based gerrymandering, which counts those who are incarcerated as residents of districts where they are incarcerated and not in districts where they are actually from, all the while denying many of these community Members a voice and a vote. This in turn distorts the census count in voting districts.

What harms does present—prison gerrymandering pose to Black voters?
Ms. I FILL. Yes, thank you so much, Congresswoman Bush. This is the place where voting discrimination intertwines with the longstanding discrimination in our criminal justice system that results in Black and Latino Americans being disproportionately represented in prisons around the country.

Prisons are often located in rural majority White areas. They very often are places where employment opportunities exist for correctional officers, particularly for White correctional officers. When those who are incarcerated, disproportionately Black and Brown, are counted as part of those rural districts where they are not residents, then that means that all the collateral consequences of counting them there flow as well. That includes funding, plans around development and business, and jobs, and so on and so forth when in fact they should be counted in their home communities because most people who are in prison will go home.

We know that when we count in the census and we do our districting it lasts for 10 years, but most people will be home before then and it essentially means that resources that should be allocated to communities of color in places like where I'm sitting right now, Baltimore City, are instead allocated to places in—that are rural and that are majority White.

Ms. B USH. Yes, thank you so much. We can no longer appeal to the moral conscience of White moderates as Dr. King warned. We now know that our fight is an existential one. It demands that we ask ourselves fundamental questions about what we stand for as a country. Do we stand for White supremacy or do we stand for—do we stand for White supremacy or antiracism? Do we stand for politics or fear or politics of opportunity? That is what is at stake. Thank you so much, and I yield back.

Ms. G ARCIA. Mr. Chair, we can't hear you, sir. You are muted.

Mr. COHEN. Thank you, Ms. Garcia. Thank you.

I said if Mr. Johnson's walking the halls, if he would like to say anything, he would be welcome to.

He doesn't, I guess. Anyway, I now recognize—

Mr. JOHNSON of Louisiana. Yes, I will pass, Mr. Chair. I appreciate it. Having technical difficulties here.

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

I now recognize the lady who represents the district of Barbara Jordan, I believe; if not the district, the spirit, and one of the great leaders whose names were sponsors of the 2006 law; it was the Fannie Lou Hamer bill as well as the Rosa Parks and the Barbara Jordan bill in 2006, Ms. Sheila Jackson Lee, for five minutes.

Ms. J ACKSON LEE. Chair, thank you for this timely hearing and thank you for reminding us of that moment in history. I was pleased to be able to add my predecessor and mentor the Honorable Barbara Jordan's name to that bill in terms of its absolute unity between Republicans and Democrats.

I was crushed last night about 10:30 p.m. as a sinister Act was performed on the floor of the United States Senate, and that is the defeat of a talking filibuster that would have led to the opportunity for the passage of the Voting Rights Act. In the words of Dr. King, paraphrased, justice was crushed and certainly the righteousness of rolling waters did not exist.
So, I believe that it is crucial for this hearing today, but also to take up the words of the President of the NAACP as was indicated on the floor of the Senate, “We’re not finished. We will continue.” My recommendation is for the Senate to institute debate and to continue to place this on the floor of the United States Senate until it is passed. We are in a road that is going nowhere if we continue the pathway that we are.

Let me start by saying that it is my belief that race is a crucial factor in the efforts that we have seen sadly by our friends on the other side of the aisle. I did not call them racists, but I said racism is an extreme factor in the denial of voting rights. I listened to the minority Witness; we welcome her, to describe persons at the Justice Department for different views as left-wing persons only because they want to enhance the power of the vote.

Let me also be very clear that section 4 indicates in the Constitution that the Congress may at any time by law make or alter such regulations.

In listening to Senator Klobuchar, I want to make sure that it is not the Founding Fathers’ desire that it be the tyranny of the minority. In fact, Thomas Jefferson said it’s my principle that the will of the majority should always prevail. The idle principle Republican government is the will of the majority. That did not occur as we proceeded. We have been stifled by the minority.

So, I want to focus on the question of race and voting, if I might, and I want to go to Sherrilyn Ifill. In a discourse on the floor of the House Senator Collins—excuse me, on the Senate last evening tried to suggest that section 2 was a substitute for section 5. Certainly, Senator Ossoff did a beautiful job, but let us understand; and my time is short, how crucial it is about section 5 and that it is a poor comparison, though we welcome section 2, to suggest that that is the answer to voting rights violations.

Ms. Ifill. Thank you very much, Congresswoman Jackson Lee. Sections 5 and 2 were meant to complement each other, but the preferred way of addressing voting discrimination was section 5, which is to have a mechanism to catch voting discrimination before it is implemented and to avoid the long periods of time and the high cost of litigation that Tom Saenz referred to later.

So, the first resort was section 5 and the [inaudible] process, which essentially Tom Saenz calls alternative dispute resolution. Let me use an example from Texas, your State.

When Texas passed its voter ID law, we filed suit almost immediately. This was after the Shelby County decision removed pre-clearance. This was a voter ID law that Texas had been unable to get pre-cleared earlier. The law went into effect. We litigated. We ultimately won. Then we went up to the appeals court. Then we came back down. We ultimately completed and settled the case for 2018.

Ms. Jackson Lee. Thank you.

Ms. Ifill. In 2014 and 2018 that discriminatory voter ID law was in place. It should never have been in place and that’s why we need section 5. When it doesn’t—when it slips through the cracks, then we need section 2 to be able to litigate and challenge discriminatory voter—
Ms. JACkSON LEE. Thank you. My time is short. I want to ask Mr. Johnson, President of NAACP—and I know he knows that the Niagara Movement started in West Virginia where Senator Manchin is representing, and then to Wade Henderson.

I want to get to this question of race. Not to be able to throw racism around, but every time voters who happen to be of color seem to be making a legitimate legal headway. like Texas for example, they have criminalized voting infractions. Please comment on that because we will not move forward if we cannot understand what the underpinnings of voter suppression is.

Mr. President of the NAACP?

Wade?

Appreciate your comments. I would also appreciate the comments of Mr. Saenz if my President would allow them—my Chair to allow them to answer.

Mr. Chair? Mr. Johnson?

Mr. JOHNSON. Well, first, the vote is the currency in any democracy. As we’ve heard here, many people are conflating race with partisanship. For African Americans we want to fully engage and participate and not be criminalized nor be put in a partisan bucket because we want to have fair and equal representation and the ability to elect candidates of our choice.

So, for African Americans, for the Latino community we want to be able to fully engage to deposit our currency in this democracy for clear representation and not be criminalized for that, not be penalized for that, but stand up as full citizens in this country.

Ms. JACKSON LEE. Thank you, Mr. Johnson.

Mr. Saenz?

Mr. Henderson?

Mr. HENDERSON. Congresswoman, thank you for the question. First, Derrick Johnson is a Vice-Chair of the Leadership Conference and I associate myself with his remarks. I’d now like to defer to my other Vice-Chair Tom Saenz to give him an opportunity to speak to that question as well.

Ms. JACKSON LEE. Thank you so very much, Mr. Henderson. Mr. Saenz is welcome.

Mr. Saenz. Thank you. As you know, your State Texas is one of a number of States on the cutting edge of change in this country, and that’s demographic change that is unprecedented. We have the chance to demonstrate what democracies do in response to demographic change, and what they appropriately do is work to incorporate every one in the franchise and let them all vote when they have the right to do so. Instead, what we see is a reaction to demographic change, unfortunately in Texas, repeated in other parts of the country; that is, to suppress the vote, particularly of those groups that are becoming of a size that is viewed as a threat to the powers that be.

So, this is really about the opportunity to demonstrate that racial demographic change can still preserve the democracy that we have
in this country. Texas, as you know, is right at the cutting edge of these issues.

Ms. JACKSON LEE. Thank you so very much.  
Mr. Chair, may I submit into the record these documents, please?  
Mr. COHEN. Without objection, so done.

[The information follows:]
MS. JACKSON LEE FOR THE RECORD
1. Disqualify Voters (purges, address issues)

2. Discourage Would Be Voters (New crimes, empowering poll watchers, inconvenience of voting, indicting of individuals for innocent activity so they can promote publicly such as Crystal Mason and Hervis Rogers)

3. Discourage best candidates from running for office with new nefarious laws that are essentially private AG type cases that nearly anyone can bring against a candidate

4. Take over or limit local voter initiatives with authority given to Secretary of State

5. Impediments to Mail-in Voting

6. Impediments to Early Voting (time, location)

7. Affidavit and Signature Requirements

8. Authority of Poll Watchers

9. Vague and overbroad laws intending to handcuff election officials

10. Counting Laws
Why Texas election officials are rejecting hundreds of vote-by-mail applications

January 20, 2022 5:01 AM ET

Several counties in Texas have reported rejecting hundreds of vote-by-mail applications in the past week because of confusion over new ID requirements created by a Republican-backed law that went into effect last month.

The Texas law, known as Senate Bill 1, requires that people provide either a partial Social Security number or a driver's license number on their application for a mail-in ballot — and that number has to match the identification on their voter registration.

The problem is this: A lot of people don't remember what form of ID they put on their registration. That's especially true if they registered to vote decades ago.

James Slattery, senior staff attorney with the Texas Civil Rights Project, says it was obvious this new rule was going to create a huge headache for voters and local officials — which is why he warned state lawmakers about it this past summer.

"It is easy to see the needless chaos and mass disenfranchisement that requiring this matching process will create," he told a Texas House committee in July.

Under SB 1, not having matching ID information is grounds for rejecting that ballot application, which is what officials in Texas say they've been forced to do lately.

In Austin, Travis County Clerk Dana DeBeauvoir says a lot of voters have been tripped up by this new rule.

"This is all brand new," she told reporters on Tuesday. "This is all because of SB 1. These are new obstacles for voters. They have never had to deal with this kind of problem in the past."
In a press release last week, DeBeauvoir's office said it had "rejected about fifty percent of applications for ballot by mail that have been received for the March 1, 2022 primary election."

"Many other counties are experiencing the same high rejection rate," officials wrote.

According to the San Antonio Report, officials in Bexar County also found problems with half the ballot applications they received. Williamson County and Houston also reported similar issues.

"This is literally the exact thing that I and many other civil rights groups warned about," Slattery said.

In a press release Friday, the Texas secretary of state's office urged Travis County to "immediately review and re-examine the mail ballot applications in question." State officials said they were surprised to see "an unusually large percentage of applications for a ballot by mail" had been rejected by some counties.

**Not many Texas voters can vote by mail**

All this confusion is having the biggest impact on the few groups who are even eligible to vote by mail in Texas in the first place.

Texas' vote-by-mail program is among the most limited in the country. Only voters who are out of town, over 65 or disabled are allowed to use a mail-in ballot.

Bob Kafka, a coordinator with a disability rights group called Rev Up Texas, says organizations like his are already fielding a lot of questions about this issue.

"The questions we are getting is, you know, 'What do I put in? How do I do that?'" he said.

Kafka says the new Texas voting law created a slew of new hurdles for people like him. Besides these changes to vote by mail, there are new rules for people who need assistance at the polls. Among other things, voting assistants have to fill out new paperwork and are subject to criminal penalties if they help a voter in ways they did not clear with officials beforehand.
Kafka says all these changes just make it harder for people with disabilities to vote.

"We feel that we have been targeted by the legislature to suppress the disability vote," he said. "Whether intentionally or not, that is exactly what the reality is."

Republican state Sen. Bryan Hughes, SB 1's sponsor, did not reply to a request for comment about the ballot application rejections.

**Election officials feel "hamstrung"**

Travis County's DeBeauvoir says the most frustrating part of the new law is that she can't even communicate with voters about how to fix their application.

A provision in SB 1 says local officials can "make no attempt to solicit a person to complete an application for an early voting ballot by mail, whether directly or through a third party." Violating that is a state jail felony that carries a mandatory minimum of six months of imprisonment and a fine of up to $10,000.

DeBeauvoir said she's "hamstrung."

"A state jail felony is nothing to thumb your nose at," she said. "You know, I would have preferred to tell voters exactly what to do. But I think under the circumstances we are going to have to rely on the community and the parties to help solve the problem that the legislature created."

Before announcing the rejected ballots, DeBeauvoir said she had been waiting for guidance from state officials on what to do to make sure eligible voters don't get their applications rejected. On Tuesday she said she's been turning to state databases and has been able to cure some applications that she said she first rejected.

Sam Taylor, assistant secretary of state for communications, says his office has been working as fast as they can to give clear guidance to counties on how to cure rejected ballots — as well as all the other changes that were implemented under the new Texas voting law.

SB 1 — which amounts to a massive overhaul of the state's election code — wasn't passed until this past fall during a second special session.
Taylor says the secretary of state's office has been under a serious time crunch.

"There are a lot of new forms to update, a lot of new guidance to provide," he said. "And this guidance in particular, I think from our elections division they have told me this is the longest, most comprehensive guidance they have ever had to issue."

For now, the secretary of state's office is directing voters to a brand-new state ballot tracking website if they want to fix their ID information or check the status of an application.

DeBeauvoir says, so far, the state's website doesn't have complete data.

Ultimately, voting groups are advising people ahead of the primary election in March to fill out both their Social Security and driver's license numbers on their application. That way, one of them is bound to be right.
"We shall overcome because the arc of the moral universe is long but it bends toward justice."

Rev. Dr. Martin Luther King Jr. spoke these words at the National Cathedral on March 31, 1968, and that truth continues to ring loudly today. From the earliest moments of our nation’s birth, the right to vote has been hotly contested. For every individual who has worked to expand voting rights, another has worked to curtail them, resulting in unfinished work for
the next generation. As the response to the 2020 election revealed, it is imperative that we continue this work.

Nearly fifty-four years after Rev. Dr. King spoke these words, we face another turning point in the life of the nation and for the dignity of men and women and the destiny of democracy.

Since the November 2020 presidential election that drew more than 156 million Americans to the polls, obliterating all previous turnout records, the result of which saw the election of Joseph Biden as president and Kamala Harris as the first woman and person of color vice president and the stinging defeat of the dishonest former president who was and is still telling the Big Lie, the forces of reaction that pine for a return to the days of America’s dark past have stopped at nothing to undermine our democracy and derail America’s 246-year experiment in self-government.

The polarization of Americans is ever increasing, and this was seen during the 2020 election through tactics meant to impede the right of certain Americans to vote, such as the removal of mailboxes and the closing of postal stations in order to impede mail-in voting. After the former president was soundly defeated at the ballot box in what experts unanimously proclaim was the most secure election in history, still the former president and his cronies propagated the Big Lie that the election was illegitimate because it was rife with fraud. The former president persisted in this specious claim even though, despite ample opportunities to do so, they produced not a scintilla of evidence to persuade any of the 61 state and federal courts that entertained the claims.

State election officials were threatened or offered inducements to change election results, and on Jan. 6, 2021, a violent mob invited by the then-defeated former president of the United States came to Washington, D.C., and laid siege to the Capitol for the avowed purpose of disrupting the constitutionally-mandated Joint Meeting of Congress to confirm the votes of presidential electors and announce publicly to the nation and the world the persons elected as president and vice president of the United States. As a result of the mayhem instigated by the 45th president, the congressional meeting was delayed for several hours, and six persons lost their lives. At
least 138 officers, 73 from the United States Capitol Police Department and 65 from the Metropolitan Police Department in Washington, sustained injuries during the attack on the Capitol, several of which required hospitalization. Dozens, if not hundreds, of officers will suffer in years to come with post-traumatic stress disorder and have to cope with coronavirus infections contracted from the unmasked domestic terrorists and rioters who stormed the Capitol. I have had numerous conversations with the families of the victims of the failed insurrection, and time and time again I have been told that something must be done to prevent this tragedy from occurring again. The truth is that one integral part of preventing this from recurring is to strengthen the integrity and legitimacy of our elections through the Freedom to Vote: John R. Lewis Act.

All of this is more than enough to sound the warning bell that we are now engaged, as President Lincoln observed at Gettysburg, in a great contest testing the proposition that this nation, or any nation conceived in liberty and dedicated to the proposition that all men and women are created equal, can long endure.

But to this has been added reactionary state laws passed or introduced in 49 states to suppress, abridge, restrict, or deny the right to vote of millions of eligible Americans, particularly persons of color, young persons and persons with disabilities, and working parents, precisely the constellation of persons whose votes determined the outcome of the 2020 presidential election.

According to the Brennan Center For Justice, between Jan. 1 and July 14, 2021, at least 18 states enacted 30 laws that restrict access to the vote, some making mail voting and early voting more difficult, others imposing harsher voter ID requirements, and making faulty voter purges more likely. In total, more than 400 bills with provisions that restrict voting access have been introduced in 49 states in the 2021 legislative sessions.

My home state of Texas is ground zero for this desperate effort to hold back an American future led by the ascendant coalition of young, racially diverse and all other tolerant, imaginative, and innovative voters who became energized and inspired by Barack Obama in 2008 and the belief in a new
and just America. To combat not their ideas but instead their increasing numbers, the Republican Legislature and governor of Texas passed and signed into law SB1, which bans drive-thru voting, 24-hour voting, and the distribution of mail-in ballot applications; imposes new and extraneous ID requirements for voting by mail; authorizing "free movement" to partisan poll watchers, effectively turning them into vote suppression vigilantes; requires monthly checks of voting rolls to facilitate purging unwanted voters; and imposes onerous new rules for voter assistance. Similar laws have been enacted in Georgia, Florida, and 15 other states.

Although these specific attempts to suppress voters are new, they are simply the reformulation of old tactics. On March 15, 1965, before a joint session of the Congress and the eyes of the nation, President Lyndon Johnson explained to the nation the significance of "Bloody Sunday":

"I speak tonight for the dignity of man and the destiny of democracy. . . .

"At times history and fate meet at a single time in a single place to shape a turning point in man's unending search for freedom.

The work for civil rights and voting rights involved tens of thousands of individuals who fought to correct the course of the nation by setting it on a path of equal rights and justice for all. The efforts of Dr. Martin Luther King, Ralph Abernathy, Andrew Young, Hosea Williams, Coretta Scott King, and John Robert Lewis, among others, as well as the thousands of foot soldiers in the civil rights movement succeeded in waking the nation to the idea that change was needed. The result of their work was the establishment of protections that allowed voters of every race, creed, color, and political belief to cast ballots free of interference or threat. The blood spilled during these difficult times is not forgotten by the communities that saw and experienced these battles, which is why laws like Texas SB1 cannot go unanswered by the United States House of Representatives and Senate. To meet this challenge we have been called upon to face and overcome, what is needed is for men and women of courage, conscience, and conviction to step forward and come to the aid of their country by passing the Freedom to Vote: John R. Lewis Act to strengthen the foundation of our democracy upon which all else depends, including the important necessary
investments to Build Back Better and mitigate the effects of Climate Change.

However, these bills cannot be passed unless actions are taken to address the Senate filibuster. The Senate filibuster is not enshrined in our Constitution. In fact, the modern Senate filibuster cloture rule was not created until 1917, and ever since it has repeatedly proven to be a barrier to the civil rights and liberties of all Americans. The defenders of Jim Crow pioneered the weaponization of the filibuster, successfully deploying it time and time again to block civil rights bills. For nearly a half century after the creation of the modern filibuster, not a single substantial civil rights bill became law. Richard Russell, a leading filibuster practitioner and staunch segregationist, said in 1949 that outside of civil rights, "nobody mentions any other legislation in connection with it." The longest filibuster on record was by the segregationist Strom Thurmond in 1957, who held the Senate floor for more than 24 hours in an attempt to block civil rights legislation. For generations, the filibuster was used as a tool to block progress on racial justice. In recent years, it has been used as a tool to block progress on everything.

Today, just as it has been historically used to block civil rights legislation, the filibuster is being used to block voting rights, civil rights, and democracy-protecting bills that are overwhelmingly popular among Americans, including the Freedom to Vote: John R. Lewis Act. It is anathema to our democracy that the constitutional rights held by the people can be curtailed by a procedural mechanism like the filibuster created over a century ago.

We can either protect the filibuster, an outdated and abused Jim Crow relic, or we can protect our democracy and deliver real results for the American people. For this reason, the Senate must provide for a suspension of the Senate filibuster when a vote concerns the integrity of our democracy and ensuring the rights enshrined in our Constitution. No right is protected by more parts of the Constitution than the right to vote, and no party should be allowed to filibuster bills that would ensure this right.
This is not an easy battle; numerous forces oppose this good work. We have already seen pitfalls, even from the United States Senate, suggesting that we will fail. But as Thomas Paine wrote on Christmas Eve in 1776, the "summer soldier and the sunshine patriot will, in this crisis, shrink from the service of their country; but he that stands by it now, deserves the love and thanks of man and woman. Tyranny, like hell, is not easily conquered; yet we have this consolation with us, that the harder the conflict, the more glorious the triumph." We must act with courage and suspend and stop the Senate filibuster in order to pass the Freedom to Vote: John R. Lewis Act, both of which are critical for ensuring the integrity of our constitutional right to vote and the fullness and fairness of our elections.

Congresswoman Jackson Lee, a Democrat representing the 18th Congressional District of Texas, is a senior member of the House Committees on the Judiciary, on Homeland Security and the Budget, the Chair of the Judiciary Subcommittee on Crime, Terrorism, and Homeland Security, a member of the Judiciary Subcommittee on Constitution, Civil Rights, and Civil Liberties, and a former staffer of the Southern Christian Leadership Conference.
New Texas Republican map carves Jackson Lee district and cuts off Black constituents

October 14, 2021 at 8:00 p.m. EDT

The new Texas congressional map shreds the Houston-based legislative district of Democratic Rep. Sheila Jackson Lee, siphoning off thousands of her Black constituents and potentially forcing her into a primary election against her neighboring Black incumbent, Rep. Al Green (D).

Critics of the new plan say it’s a racial gerrymander intended to weaken Black voices in Congress, even as it protects other incumbents.

Jackson Lee, 71, is the second-longest-serving member from the Texas delegation, having represented the 18th District for nearly three decades. Since it was won by Barbara Jordan in 1972, the first Black woman to represent the state, the boundaries have largely remained the same.

But now, Texas Republicans in charge of redistricting have advanced a map that would remove downtown Houston, with Jackson Lee’s main office, two universities and the predominantly Black Third Ward neighborhood, considered the center of Black life in Houston, from the 18th District.

“I’m very hurt,” Green, 74, said in an interview with The Post. “I’ve lived long enough to see change and progress. This is a retrogression that takes us back to a time when persons who had the authority could abuse that authority with impunity, I just hope that this is not just the case.”

Republicans retain a 23-to-13 advantage over Democrats in the House delegation. Under the GOP proposal, the number of safe Republican seats would double from 11 to 22, while the number of safe Democratic seats would increase from eight to 12. One seat leans Democratic and two lean Republican. The number of toss-ups would fall from 12 to one.

Green and Jackson Lee appealed to the Texas Republicans in a Sept. 29 letter, decrying the new lines as an “act of racial discrimination.” When they received word on Tuesday that the map was going before the House redistricting committee the next day, they left Washington that night to make it to Austin on Wednesday in time to testify against it.
In an interview, Jackson Lee echoed Green’s heartache and said that no one has given her an explanation for why she had been drawn out of her district. “There was absolutely no response,” Jackson Lee said. “This was purposeful racial gerrymandering, which is very shameful in 2021.” She continued, “I am stunned, we are hurt, but we’re not giving up.”

Gary Bledsoe, who serves as the president of the Texas chapter of the NAACP, said Texas Republicans who control both chambers of the state legislature had “cut it up this way to engage in anti-Black activity. They weren’t paired by accident. They were paired by design.”

State Sen. Joan Huffman (R) and state Rep. Todd Hunter (R), who lead their respective chambers’ redistricting committees, did not respond to requests for comment about the new map on Thursday.

The map has already passed the Senate. Hunter rushed passage through his committee, providing the minimum of at least 24 hours advance notice for testimony and refusing to allow amendments. Members will have a chance to offer changes when it comes to a full vote in the chamber.

“The consideration of redistricting priorities and objectives which guided the approach to redistricting included complying with all applicable law, including the Constitution, the Voting Rights Act ... preserving the cores of existing districts, creating geographically compact districts, addressing partisan considerations, protecting incumbents, and when it is possible, honoring requests made by incumbent members,” Hunter said.

Huffman and Hunter have said the maps were drawn without regard to race, but Republicans also have defended the changes to the 9th and 18th districts because both remain majority non-White under the new lines. The new map increases the share of Hispanic voters in both districts.

Bledsoe said that doesn’t shield them from a legal challenge under the 1965 Voting Rights Act. Both districts are deemed African American opportunity seats, so they’re not allowed to change the “character” of them.

Bledsoe said the Republicans “took out the economic engine” of the 18th District and sliced up historically Black neighborhoods, while drawing a new White-majority, Republican-friendly seat north of Houston.
Green and others contend that the Republicans didn’t need to force him
and Jackson Lee into the same district to create a new red district, and he
believes that it wasn’t a political decision, but a personal one.

“Texas is consistently finding ways to abuse the process as it relates to
people of color, and this appear to be the latest effort to do that,” Green
said. “The evidence speaks for itself: two people of African ancestry are
running out of the same district now? You can only conclude that if they
didn’t have to do it and they have done it, there is some intentionality.”

This is not the first attempt from Republicans at eviscerating districts
represented by Black lawmakers in Texas, Bledsoe said, but a decade ago
there were more safeguards. The legal avenues have narrowed since the
Supreme Court in 2013 gutted Section 5 of the landmark 1965 law, which
required states with a history of racial discrimination, such as Texas, to
clear their proposed maps with the federal government.

In 2012, in a challenge against Texas’s newly enacted redistricting plans,
the U.S. District Court for the District of Columbia ruled that the state had
failed to show that the congressional maps it had drawn did not “have the
purpose or effect of denying or abridging the right to vote on account of
race, color, or membership in a language minority group.”

The judges wrote they were “troubled by the unchallenged evidence that the
legislature removed the economic guts from the Black ability districts,”
notably the 9th and 18th districts, as well as the 30th, represented by Rep.
Eddie Bernice Johnson (D), and said it led them to “infer a discriminatory
purpose.” The new Texas maps were denied preclearance.

Democrats and civil rights groups have excoriated Texas Republicans over
their drawing of lines that aim to shore up Republican incumbents at the
expense of giving minority communities more representation.

The population boom that occurred in Texas over the last decade resulted
in it being the only state to gain two new seats in Congress following the
2020 Census. The growth came almost exclusively from new non-White
residents, yet the new lines do not create any additional opportunities for
Latino or Black voters to elect a candidate of their choice.
Jackson Lee said of the tactics, “Silencing a voice of opposition is the most deadly aspect of democracy. I guess they thought this would be the end of her. We haven’t defeated her in all of these efforts. What else could it be? But I want them to define what it is and I’d like them to fix it.”
U.S. Reps Sheila Jackson Lee and Al Green traveled to Austin on Monday to make a rare in-person plea to members of the Texas Senate to change a redistricting plan that would shift hundreds of thousands of Black residents in Houston into new congressional districts.

Jackson Lee said the proposed redistricting plan for Houston is unnecessarily "radical and drastic" and would sever neighborhoods that have been in the 18th Congressional District for the last 50 years.

"This surgery seems totally without purpose," said Jackson Lee, who is the longest-serving member of Congress from Houston.

Downtown Houston, Third Ward, Texas Southern University, and the University of Houston, would all be removed from Jackson Lee’s 18th Congressional District. Even her home of nearly 50 years would be removed from the district, preventing her from being able to vote for herself in future elections unless she moved. Parts of her district would be put into Green’s neighboring 9th Congressional District or Rep. Sylvia Garcia’s 29th Congressional District. In all, more than 200,000 people in mostly Black neighborhoods would get new members of Congress.

“I am respectfully asking for these districts to be repaired,” Jackson Lee said.

Despite the pleas of the two Democrats, the Senate Redistricting Committee voted 9-6 to adopt the proposed maps without any changes. State Sen. Joan Huffman, a Houston Republican who is leading the redrawing effort, said she is open to changes to the map and told Green and Jackson Lee they have to have those proposals in by Thursday morning to be considered by
the full Senate. Huffman offered no promise that any of the changes would receive her support.

Every 10 years after the U.S. census, the Texas Legislature is required to redraw all of the state's congressional districts to account for population shifts and to assure each district has a near-identical number of people.

The Republican plan created two entirely new districts in Houston and Austin, and mostly protects current members of Congress by making their districts more partisan.

While the districts of Jackson Lee and Green would remain Democratic strongholds, both objected to the shuffling of communities that could result in them being pitted against one another in the 9th District unless something changes. Members of the House, however, are not required to live in their districts.

Green questioned why Republicans would decide that the only two members of Congress in Texas who would be placed in the same district in all of Texas would be two of the longest-serving members who happen to be Black.

"It doesn't look right," he said.

Green took exception to Republicans taking parts of the International District out of his 9th Congressional District and moving them into the 7th Congressional District, represented now by U.S. Rep. Lizzie Fletcher, a Democrat.

After Green and Jackson Lee testified, Huffman insisted once again that the proposed maps are in compliance with the Voting Rights Act, which aims to protect minority communities from having their voting rights infringed upon. Huffman has repeatedly said she had the maps drawn without consideration of race.
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Mayor Turner’s Statement on Voter Registration Card Shortage in Texas

HOUSTON – Mayor Sylvester today issued the following statement in response to reports that the Texas Secretary of State’s office will distribute fewer voter registration forms to groups ahead of elections this year.

"Today, the Texas Secretary of State’s Office sent an alarming message to Texans who want to exercise their sacred right to vote. The Houston League of Women Voters confirmed to my office the Texas Secretary of State said a ‘paper shortage’ would limit the number of voter registration cards available. (The story was first reported here by KUT Radio.)

This is embarrassing, unacceptable and must immediately be addressed.

The LWVH has prepared around 3,500 voter registration cards and information packets monthly for naturalization events in previous years. This year, when making their request, they were told the Texas Secretary of State could offer 50.

That is disgraceful. Fifty voter registration applications for a month worth of events, directly before the March 1st primary, in the 4th largest city in America.

Texas has refused to join 41 other states in offering safe and secure online voter registration, which has been proven to be more accurate and much more cost-effective.

Keep in mind, the voter registration cutoff date is 30 days before an election, meaning that the deadline for the all-important primary elections in Texas is February 1st.

The voter registration card shortage and the increasing number of rejected mail ballot applications are more examples of problems that have plagued elections officials across the state.

Mayor Turner's Statement on Voter Registration Card Shortage in Texas

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to correct the past tax, remove the pre-clearance protections of the VVRA, Texas is again abusing the fair administration of elections and the ability of Texans to register to vote.

Members of the US Senate must ask themselves if running out of paper for voter registration cards is an excuse worthy of denying a vote on election reforms. This cannot be allowed to stand."

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Rep. Jackson-Lee: The Senate must suspend filibuster for bills designed to ensure right to vote

Rep. Sheila Jackson Lee

Jan. 13, 2022
Updated: Jan. 13, 2022 11:39 a.m.

From the earliest moments of our nation's birth, the right to vote has been hotly contested. For every individual who has worked to expand voting rights, another has worked to curtail them, resulting in unfinished work for the next generation. As the response to the 2020 election revealed, it is past time to continue this work.
Forty-nine states have introduced bills or passed laws intended to suppress, abridge, restrict or deny the right to vote of millions of eligible Americans, particularly persons of color, young persons, persons with disabilities and working parents — precisely the constellation of individuals whose votes determined the outcome of the 2020 presidential election. The changes being made in state legislatures are not in response to voter fraud, but due to fear about which voters will cast ballots in elections to come. The battle lines are not limited to ethnicity and race. They point to an effort to create deeper divides in our nation that can only be healed by ensuring each eligible voter will have their votes counted as cast. This can only be accomplished through the enactment of the John Robert Lewis Voting Enhancement Act of 2021 and the Freedom to Vote Act.

However, these bills cannot be passed unless actions are taken to address the Senate filibuster. The Senate filibuster is not enshrined in our Constitution. In fact, the modern Senate filibuster cloture rule was not created until 1917, and ever since it has repeatedly proven to be a barrier to the civil rights and liberties of all Americans. The defenders of Jim Crow frequently exploited the filibuster, successfully deploying it time and time again to block civil rights bills. For nearly a half century after the creation of the modern filibuster, not a single substantial civil rights bill became law. Richard Russell, a leading filibuster practitioner and staunch segregationist, said in 1949 that outside of civil rights, “nobody mentions any other legislation in connection with it.” The longest filibuster on record was by the segregationist Strom Thurmond in 1957, who held the Senate floor for more than 24 hours in an attempt to block civil rights legislation. For generations, the filibuster was used as a tool to block progress on racial justice. In recent years, it has been used as a tool to block progress on everything.

We want to foster conversation and highlight the intersection of race, identity and culture in one of America’s most diverse cities. Sign up for the HouWeAre newsletter here.

Just as it has been historically used to block civil rights legislation, today the filibuster is being used to block voting rights, civil rights and democracy-protecting bills that are overwhelmingly popular among Americans. The filibuster as used now was never a part of our Founders’ vision of the Senate, and it has been used to force a minority vision on the entire country through narrow-minded parliamentary tactics and the blocking of policies supported by the citizenry. It is anathema to our democracy that essential rights favored
by the people can be curtailed by a procedural mechanism like the filibuster created over a century ago.

Elections are not just about the candidates. They are also safety valves that allow the public and the voters to express their will, hopes, fears and frustrations in a peaceful exercise of their right to be heard through casting a ballot in a public election. Citizens are free to vote to choose their government and the policies that they believe in. Elections are not purely government functions; each federal election requires millions of volunteers and tens of millions of voters to accomplish. Where the ability to vote is in question, apathy or violence gain appeal over ballots. If the democratic process loses legitimacy and efficacy, then citizens will either refuse to participate or engage in protests as a necessary means of political expression.

We can either protect the filibuster as an outdated and abused Jim Crow relic, or we can reform it to protect our democracy and deliver real results for the American people. For this reason, the Senate must provide for a suspension of the filibuster when a vote concerns the integrity of our democracy and ensuring the rights enshrined in our Constitution. No right is protected by more parts of the Constitution than the right to vote, and no party should be allowed to filibuster bills that would ensure this right.

We must act with courage and suspend the Senate filibuster in order to pass the John Robert Lewis Voting Rights Enhancement Act of 2021 and the Freedom to Vote Act, both of which are critical for ensuring the integrity of our constitutional right to vote and the fullness and fairness of our elections.

Jackson Lee is a Democrat from Texas’s 18th Congressional District.
Ms. JACKSON LEE. May I just call their names out? “Texas Election Officials are Rejecting Hundreds of Vote-by-Mail Applications and is Going on as We Speak.” “Voting Rights is a Constitutional Right,” an article by myself in The Hill. article dealing with the putting together of two African American Members in the redistricting plan put together in September 2021. Washington Post, “New Texas Republican Map Carves Jackson Lee Out.” A statement of the mayor of the City of Houston about the voter registration shortage right now existing in the State of Texas where people cannot be registered because we do not have any voting card, “Voting Suppression Glaring in Texas and Other States.”

As I indicate to Ms. McBath, I thank her for her presentation because she too has been a victim of trying to eliminate people of color from the process of empowerment of democracy.

I yield back, Mr. Chair. I thank you so very much.

Mr. COHEN. Thank you, Ms. Jackson Lee.

Do any of the Members want a minute or so to either make a final statement or ask a final question, rebut anything, or submit any new data?

Mr. Raskin, you look like you are pondering.

Mr. RASKIN. Mr. Chair, forgive me, but I took note that some of our colleagues were talking about proxy voting. Again, I don't know what the specific context was, but now a majority of both the majority in the House and a majority of the minority in the House have cast votes, most of them repeatedly by proxy. I know that there was a polemical attack on proxy voting when the COVID–19 nightmare first began, but it seems like it has been well established through practice. There are no courts holding that we can't conduct proxy voting under our article 1 power to define the rules of our own proceedings. So, I think all that is a little bit of a red herring and an irrelevant distraction from what we are here to talk about today.

Mr. COHEN. Mr. Raskin, Mr. Roy, and Mr. Johnson came back to the hearing. They had gone to vote on the floor. I had noted that there were no Republicans to have as questioners and they were, understandably being in Washington, gone to vote. Mr. Johnson has suggested that they; and I think he meant the Republicans, didn't believe in proxy voting. I had commented that they did; that they did participate. If they [inaudible].

Mr. ROY. Mr. Chair?

Mr. COHEN. Mr. Roy, if you would like to respond? If you—

Mr. ROY. Yes, I don't want to waste the Committee's time on a topic that is tangential, but in response to my friend Congressman Raskin, look, I believe it is unconstitutional. I have not voted by proxy. That is true for a block of Republicans. I am an equal opportunity basher of my colleagues when I think that they are doing something unconstitutional. There are Republicans who speak with one voice and then still vote by proxy. I disagree with them. Mike is in the same camp, Johnson, I should say, from Louisiana. It puts us in an awkward spot the more comfortable the body gets with proxy voting.

Then, for example, I had a speech at the University of Virginia and I found myself when we were voting on the infrastructure bill sitting in Fredericksburg waiting to be told are we voting or not
voting on the infrastructure bill, because my vote might matter. So, I literally sat in a coffee shop in Fredericksburg for three hours waiting to know whether I was going to Charlottesville or coming back to the Hill.

I just don’t think it is a great way to do business. Obviously, I made a choice that I don’t—I am not going to give my vote to someone else. I just wanted to add some color to why that matters in my view.

Mr. COHEN. Thank you, Mr. Roy. I appreciate that. You and Mr. Johnson, I don’t know that either of you have ever voted by proxy, but the appearance Mr. Johnson was making was that Republicans didn’t vote by proxy and I particularly noted, as Mr. Raskin mentioned, that now a majority of Republicans have at one time or another voted by proxy including three or four people once who voted by proxy when they went to Mar-a-Lago to attend a fund raiser at Mr. Trump’s resort and not because of the reasons they are supposed to.

Mr. Roy, I hope you get to vote by—in person for many, many, many years as this epidemic/pandemic will be behind us. You are not over 65 years old where the coronavirus is more potent and deadly. So, for those of us over 65 it is—we think this is a good idea.

Regardless of that, anybody else have any—Mr. Roy, when I left you, you were in a sand trap on the 17th hold and couldn’t remember what you were trying to come up with and speak. Did you ever get out of the sand trap?

Mr. ROY. Yes, I did, but the hearing has gone on and we have had a good conversation. I can do—all I was going to do was—I am not going to go there. We have had a good—we will move on and move forward. I appreciate the opportunity. We are good and I thank you for giving me the opportunity.

Mr. COHEN. We’ll put the sand wedge back with the clubs in your bag.

Anybody else have anything?

Ms. JACKSON LEE. Mr. Chair?

Mr. COHEN. If not, I want to thank all the Witnesses—

Mr. Jackson Lee. Mr. Chair?

Mr. COHEN. Yes, Ms. Jackson Lee, quickly.

Mr. LEE. Ms. Butler, and Congresswoman McBath. Ms. Butler, are you there?

Ms. BUTLER. I’m here. Yes, Congresswoman.

Ms. JACKSON LEE. Yes, thank you so very much for your leadership.

To both of you, both Congresswoman McBath, could you give the extraordinary impact on vulnerable voters, whether they are elders, whether they are young people and they happen to be people of color, whether they are Hispanic or African American, and the suppressive/oppressive bill that you have?

Congresswoman McBath, would you just answer a simple fact? You represent a district, you are an African American woman, you did represent it well. In matching you in another district do you think there was some underlying thought that they might eliminate an African American woman in the United States Congress?

So, Ms. Butler and then Congresswoman McBath.
Ms. Butler. Thank you, Congresswoman Jackson Lee. Thank you. The undue burden that I’ve talked about this is with regards to vote-by-mail where people have to provide IDs. A lot of older people don’t have the capacity to copy IDs because they don’t have Georgia driver’s license or a State-issued ID.

The undue burden of out-of-precinct voting, that’s a lot of things. If you don’t know, a lot of people don’t get their information timely. They can’t vote out-of-precinct before 5:00 p.m., so it puts undue burden on them.

A lot of polling locations—just as I stated earlier in my testimony, we were down in Lincoln County already where they wanted to consolidate seven polling locations to one, giving no reason last night, according to the Chair, and had no plan for making sure people would be able to do it. Six hundred people signed a petition, both Black and White, that said, that they did not want that to happen.

The other part is the unlimited amount of challenges that people can do to people’s residency, of their ability to vote in this bill, voter suppressive bill—

Ms. Jackson Lee. Thank you.

Ms. Butler. —where it creates a hearing process and three-day notice for voters to respond to protect their right to vote. The most egregious part though is the total takeover process of the entire election process from removing election supervisors, removing the Secretary of State from his constitutional position as Chair of the State election board.

Ms. Jackson Lee. Thank you.

Ms. Butler. So, those are some of the things.

Ms. Jackson Lee. Thank you. Thank you so very much.

Mr. Cohen. I think our time is up. I thank you, Ms. Jackson Lee and everybody else.

We have a great hearing. We have discussed a lot of issues and that the importance of it is serious about the Voting Rights Act and the place where our democracy presently rests in jeopardy. This Committee continues to uphold civil rights and voting rights.

We thank all the panelists, all the Witnesses that have come before us.

The Committee Members will have five days to submit—legislative days to submit additional written questions to the Witnesses or additional materials for the record.

So, thank you for what you have all done and God bless the United States of America and let’s hope the filibuster does not kill democracy.

With that, the hearing is adjourned.

[Whereupon, at 12:41 p.m., the Subcommittee was adjourned.]
Chairman Cohen, Ranking Member Johnson, and members of the subcommittee, thank you for the opportunity to submit this statement for the record on the ongoing efforts to suppress eligible voters from participation in free and fair elections.

I write on behalf of my organization, Citizens for Responsibility and Ethics in Washington (CREW), to underscore the need for prompt and thorough action to address the escalating threats to our democracy. CREW is a non-partisan, non-profit organization committed to ensuring the integrity of our democratic institutions, combating the impact of monied special interests on our political system, and promoting ethical governance.

Democracy Under Threat

More than fifty years after the Voting Rights Act was signed into law, democracy remains under attack. While the January 6, 2021, insurrection attempt provides a visual and visceral reminder of this fact, there is perhaps an even more sinister effort to invalidate and suppress the votes of millions of Americans occurring in state capitols across the country.

Contrary to assertions made by Senate Minority Leader Mitch McConnell and other opponents of democracy reform in Congress, Black Americans and other communities of color have been and continue to be the targets of voter suppression efforts. As a federal court noted in 2016 in striking down North Carolina’s voter ID law, the statute was intentionally designed by state legislators to target Black voters “with almost surgical precision.” While the record in that case was replete with damning evidence of this nefarious intent, Republican state legislators, with the help of dark money groups, have launched similar efforts in nineteen states last year. The true intent of these bills is often masked in neutral terms, but in a private reception with its biggest donors, the head of a top conservative dark money group, Heritage Action, bragged that “her outfit had crafted the new voter suppression law in Georgia and was doing the same with similar bills for Republican state legislators across the country.”

The right to vote and government ethics are inextricably tied. One of the fundamental goals of our government ethics regime is to ensure that elected officials are listening to voters rather than monied special interests trying to buy influence. Voter suppression efforts are both unethical and antithetical to democracy. Recent history has revealed a troubling trend where government officials more loyal to Donald Trump than to our Constitution have engaged in corrupt and potentially illegal conduct in order to suppress the vote or dilute the power of American voters. Unsurprisingly, these efforts routinely target communities of color that have fought to enjoy full citizenship in this country since its inception.
Wilbur Ross Lying to Congress about the Trump Administration’s Citizenship Question on the Census

In 2018, the Census Bureau, under the leadership of Trump’s Commerce Secretary, Wilbur Ross, began a process to upend centuries of precedent by adding a question about citizenship status to the 2020 census. As many immigrant rights groups and other advocates pointed out, this effort was not only an unnecessary departure from prior practice, but also a fairly obvious attempt to deter participation in the decennial census by people in communities of color and mixed status families to undercount them for representation in Congress.

Secretary Ross claimed that the reason for the Census Bureau adding this question was not to suppress representation, but instead initiated based on a request from the Department of Justice to facilitate enforcement of the Voting Rights Act (VRA). This defense was later exposed as a lie. The United States Supreme Court blocked the question from being added to the census and described the Trump administration’s claim that it was meant to assist enforcement of the VRA as “contrived.” Ultimately, the court could not “ignore the disconnect between the decision made and the explanation given.” The Department of Commerce Inspector General also investigated the matter and found that Secretary Ross misled Congress twice in 2018 during hearing testimony about why he sought to add a citizenship question to the 2020 Census.

Documents released by the House Oversight Committee revealed that the origins of the Trump administration’s pursuit of the citizenship question tied back to a prominent Republican redistricting strategist who “had direct communication with an adviser to the Trump administration concerning the addition of a citizenship question to the 2020 census.” The strategist, Thomas Hofeller, conducted a study in 2015 that found that adding a citizenship question to census forms would produce the data necessary to redraw state and local voting districts in a way that would be “advantageous to Republicans and Non-Hispanic Whites.” If successful, this effort would have led to the miscounting and dilution of votes in many BIPOC communities across the country. Despite its failure at getting the citizenship question added to the census, the Trump administration still succeeded in creating fear in many communities of color about being counted.

Although it is a federal crime to make false statements to Congress, Trump’s Justice Department declined to prosecute Secretary Ross for his lies. Last July, CREW sent a FOIA request to the DOJ for records regarding this decision, but has, to date, received none. As of this writing, no one has been held accountable for this attempt to dilute the political power of BIPOC communities or the illegal cover-up perpetrated to disguise the Trump administration’s true intent. CREW recently filed suit in federal court to obtain documents outlining the Trump DOJ’s reasoning for its failure to prosecute Ross.

Donald Trump’s Illegal Attempt to Overtake the 2020 Election Results in Georgia

Throughout his presidency, Donald Trump and his administration repeatedly attempted to use federal resources to boost his candidacy for re-election. Trump touted low Black voter turnout as a key to his 2016 election victory, and his administration’s hostility towards voting by mail threatened Black and Brown voters in 2020. Immediately following his loss in the 2020 presidential election, Trump’s efforts focused prominently on invalidating the votes of people in states and counties with large Black populations like Atlanta, Georgia.

On January 2, 2021, Trump and various associates, including White House Chief of Staff Mark Meadows and attorneys Cleta Mitchell and Kurt Hilbert, called Georgia Secretary of State Brad
Raffensperger in an attempt to pressure and coerce him to overturn the results of Georgia’s presidential election. In the call, Trump repeatedly insisted that – despite Georgia certifying the election for now-President Joe Biden, as well as numerous investigations by state officials and multiple court decisions upholding the result – he “won the election” in Georgia. Trump made clear that the purpose of his efforts was to have Raffensperger overturn the results of the election, telling him at one point, “I just want to find 11,780 votes” – one more than the 11,779 votes by which he lost the state to President Biden. In the call Trump focused his attention on the same place over and over again: Fulton County, with its 44.5% Black and minority majority demographics. Trump demanded that Georgia election officials scrutinize votes in Fulton County for fraud and dishonesty in a failed attempt to suppress just enough votes to win the state.

Following the release of this phone call and transcript, CREW filed a complaint with the Fulton County District Attorney’s Office alleging that Trump violated multiple laws including illegally conspiring to deprive the people of Georgia of their right to vote and have their votes counted, conspiring to intimidate Georgia election officials in an effort to falsify the count of votes in the presidential election, attempting to deprive or defraud the residents of Georgia of a fair election process by falsely tabulating ballots, and attempting to cause Georgia officials to engage in conduct that constitutes a crime under the state election code. A month later, in February 2021, the Fulton County District Attorney’s office launched an investigation into Trump’s attempt to influence Georgia’s election. On January 24, 2022, the Superior Court of Fulton County in Georgia granted a request by the Fulton County district attorney to impanel a special grand jury for the DA’s investigation into Trump’s efforts to overturn the 2020 election in the state.

Republican Officials and Operatives Execute Fraudulent Elector Scheme

Following the 2020 presidential election, Republican government officials and operatives in Georgia, Arizona, Michigan, Pennsylvania, Wisconsin, Nevada, and New Mexico sent fake documents to the National Archives claiming that Donald Trump won their state’s electoral votes, despite state officials confirming that now-President Joe Biden had won in their state. These falsehoods are an extension of the false claims of voter fraud in cities with large BIPOC communities such as Atlanta, Detroit, Philadelphia, and Milwaukee. The individuals who sent these documents with false information to the National Archives were not legitimate electors, though many among them were pro-Trump Republican state government officials. Public reports indicate that Trump campaign aides oversaw their work to invalidate the votes in these states by fraudulently attempting to change the results of the election.

Although these Republican groups’ efforts ultimately failed, as Congress did not validate the false results on January 6, 2021, attorneys general in multiple states are investigating this misconduct and considering state prosecutions as well as referrals to federal law enforcement. For example, Michigan attorney general, Dana Nessel indicated that her office was considering a referral to federal law enforcement of a potential conspiracy between Republican officials in several Republican states to overturn the 2020 election. She said, “I feel confident we have enough evidence to charge if we decide to pursue that. … I haven’t ruled it out. But for all the reasons I stated, I think that it’s a better idea for the feds to pursue this.” In Arizona, a group called the “Sovereign Citizens of the Great State of Arizona” illegally used a fake Arizona state seal in their attempt to invalidate the election certification process, which Arizona Secretary of State Katie Hobbs referred to the Arizona Office of Attorney General for criminal investigation.
Conclusion

American democracy has always been a work in progress. Central to that work has been the struggle for individuals who were excluded from our nation’s founding to gain access to full democracy through the vote. Despite the Herculean efforts to secure the vote for women and non-white Americans and to pass the Voting Rights Act, every positive step forward has been met with resistance and backlash. That trend is evident in the violent insurrection attempt that occurred last year and the partisan opposition to voting rights in the halls of Congress and state capitals. The ongoing efforts to suppress the vote and dilute or diminish communities of color from accessing democracy are racist and unethical. These actions threaten our democracy and any public official complicit in these efforts betrays their oath to protect and defend our Constitution.

Thank you for the opportunity to submit this statement for the record. We welcome any opportunity to work with the committee to support reforms to expand access to voting, advance ethics in government, and promote accountability for those who are attacking our democracy.
Texas Secretary of State Office sets limits on voter registration forms due to supply chain issues

By Carma Hassan and Joe Sutton, CNN

Updated 11:32 PM ET, Tue January 18, 2022

The Texas Secretary of State’s Office says it has only a limited amount of voter registration applications due to supply chain issues increasing the cost of paper.

The office ordered its first bulk supply of 128,000 voter registration forms on November 8 and received that shipment just last week, Texas Secretary of State spokesman Sam Taylor told CNN.

The development comes as voting rights groups in Texas are already calling on voters to be proactive about educating themselves on the state’s new election law passed by the Republican-led state Legislature and signed by Gov. Greg Abbott in September. The law restricts the hours that counties can offer early voting and blocks them from sending unsolicited mail-in voting applications -- even to those who are older than 65 and therefore qualify automatically to vote by mail. Hundreds of mail-in ballot applications have been rejected in some of Texas’ largest counties because of the new law, according to multiple election officials.

While online voter registration is not authorized in Texas, voters can update their registration information through Texas.gov and people can register to vote while renewing their driver’s licenses or personal ID cards through the Texas Department of Public Safety, Taylor said.

The website for the secretary of state’s office includes instructions for filling out a form online that can then be printed out and mailed in, and for requesting an application form by mail.

One organization that has requested voter registration forms is the League of Women Voters of Texas.
Grace Chimene, the president of the League of Women Voters of Texas, said she is disappointed in the lack of preparation by the secretary of state's office.

"It should be no surprise that there would be a great demand for voter registration forms before the deadline to register to vote for the March Texas primary," Chimene told CNN. The registration deadline for that primary election is January 31.

According to Chimene, the message that her organization’s Houston branch received from the secretary of state’s office was "dismissive."

"The League of Women Voters Houston Area contacted the Secretary of State's office about the lack of new voter registration applications," she said. "The response was dismissive – despite past practices, the Office is now saying that providing voter registration forms to the League is not in the budget, there is a paper shortage, and the League should look elsewhere for subsidies."

Taylor noted that the League of Women Voters Houston “requested 16,000 voter registration forms,” adding, "That alone would have been 1/8 of our total supply received in our first shipment. When we told them we couldn’t fulfill that large of an order at this time, they requested 8,000 instead."

Taylor said they had explained that organizations and interest groups can get 1,000 to 2,000 forms at a time, and if they need more they can come back and request them.

CNN's Shawna Mizelle contributed to this report.
Texas rejecting hundreds of vote-by-mail applications under restrictive GOP-backed law

Texas election officials have rejected hundreds of mail-in ballot applications ahead of the March 1 primary as they follow new procedures in the state’s restrictive Republican-backed voting law, Reuters reports.

"My friends, this is what voter suppression looks like," Travis County Clerk Dana DeBeauvoir said at a Tuesday news conference after her office was forced to invalidate some 300 applications because of stricter and potentially confusing ID requirements.

Closer to home, Bexar County officials were forced to reject 300 of the 1,200 applications they handled through last week, Elections Administrator Jacque Callanen told Reuters. In four out of five cases, those rejections came down to the new ID requirements.

Meanwhile, Harris County rejected 409 out of 1,373 applications it received as of last Friday due to the ID concerns, according to officials there.

At issue is language in the new law requiring voters who apply for mail-in ballots to provide either a driver’s license or Social Security number that matches the number they gave when first registering to vote.

Since many voters have been on the state’s rolls for years or even decades, many can’t remember which of the two numbers they originally supplied, voting rights advocates warn. What’s more, the state...
Texas rejecting hundreds of vote-by-mail applications under restrictive GOP-backed law

Bexar County’s Callanen told Reuters the new law is also making it harder for voters by barring residents from obtaining applications to give to other people, including their own relatives and spouses. Under the new rules, spouses must request theirs separately.

“It’s sort of thwarting us at every turn,” she said.

The new law, championed by Republican Gov. Greg Abbott, was one of several passed in GOP-controlled states in the wake of former President Donald Trump’s repeated lies that deep-rooted fraud cost him the 2020 election. Abbott and other backers argued the new restrictions were necessary to protect “election integrity.”

Republicans in the U.S. Senate have blocked voting-rights legislation that would halt provisions in the Texas law. Even so, the U.S. Justice Department has sued the Lone Star State over the measure, saying the new restrictions are meant to keep Blacks, Latinos and others likely to cast Democratic ballots away from the polls.

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Texas rejects hundreds of mail ballot applications under new voting limits
Texas rejection hundreds of mail ballot applications under new voting limits

Travis County Clerk Dana DeBeauvoir speaks to the media after Travis County election officials said that due to Texas' new voting law SB1, half of vote-by-mail applications for March primaries had been rejected, in Austin, Texas, U.S. January 18, 2022. REUTERS/Sergio Flores

Jan 18 (Reuters) - Texas election officials have rejected hundreds of mail-in ballot applications, abiding by a new Republican-backed law just weeks before a March 1 primary kicks off this year's U.S. election cycle.

"My friends, this is what voter suppression looks like," Democrat Dana DeBeauvoir, the Travis County clerk, told reporters on Tuesday.

The county, home to the state capital Austin, invalidated approximately 300 applications because people failed to meet the law's stricter identification requirements, said DeBeauvoir, who retires at month's end.

Lawmakers in Texas approved a raft of voting restrictions last year, one of many efforts in Republican-controlled states to pass new limits after former President Donald Trump falsely claimed he lost the 2020 election because of widespread fraud.

Democrats in Congress this week renewed their push to pass sweeping voting rights legislation that would overturn limits such as the Texas law, but the effort appears doomed in the face of united Republican opposition.

The Texas bill prompted some Democratic legislators to flee the state for weeks to prevent the state House of Representatives from having the quorum necessary to pass it, though they eventually relented.

Republican Texas Governor Greg Abbott, who signed the bill in September and is seeking re-election this year, has said the law, known as Senate Bill 1, will increase public trust in elections.

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Texas rejects hundreds of mail ballot applications under new voting limits

The U.S. Justice Department has sued Texas over the legislation, saying it disenfranchises voters. Democrats say such restrictions discriminate against Black voters and other minorities who traditionally support Democratic candidates.

Among other provisions, the law requires voters applying for a mail ballot to provide either a driver's license or Social Security number, which must match the number they gave when first registering to vote.

That leaves some voters playing a "guessing game," DeBeauvoir said, because many people cannot recall which number they provided originally and there is no easy way for voters to check.

Harris County, which includes Houston, had rejected 409 out of 1,373 applications as of last Friday for ID problems, including 309 missing ID numbers and 173 with numbers that did not match those on file, according to Leah Shal, a spokesperson for the county elections office.

In Bexar County, home to San Antonio, officials had processed more than 300 rejections through last week out of some 1,200 applications, elections administrator Jacquelyn Callanen said in a phone interview. Around 80% of those were due to the new ID requirements.

Other provisions in the law are also creating obstacles, she said. The office previously added a sticker with voters’ addresses to applications that were mailed out to save them a step, but that is no longer permitted, Callanen said.

The law also prohibits residents from obtaining applications for other people, including relatives. Callanen said her office regularly receives messages from senior citizens asking for ballots for themselves and their spouses; under the law, spouses must make their own separate requests.

"It's sort of thwarting us at every turn," she said.

Mail ballots in Texas are already sharply limited to a handful of categories, including residents 65 years and older, disabled residents or voters who will be absent from their county during early voting and Election Day.

DeBeauvoir said Secretary of State John Scott’s office had failed to give local officials enough guidance on how to help voters cure any defects.

In response, Sam Taylor, a spokesperson for Scott’s office, said state officials reached out to Travis County last week to advise staff on the proper process and noted that the county’s own estimated rejection rate went down from 50% to 27% following that guidance.

He said clerks have been instructed to accept applications in which voters have included both their license and Social Security number, as long as one of them matches what is on file.

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Voter Suppression and Continuing Threats to Democracy
Subcommittee on the Constitution, Civil Rights, and Civil Liberties
Thursday, January 20, 2022

STATEMENT FOR THE RECORD

About FairVote
FairVote is a nonpartisan organization seeking better elections for all. We research and advance voting reforms that make democracy more functional and representative for every American. FairVote has a proven record since 1992 as a nonpartisan trailblazer that advances and wins electoral reforms at the local, state, and federal level through strategic research, communications, and collaboration.

We believe that equality in voting is essential for any reflective and accountable democracy.

This is the submitted statement for the record of FairVote for the House Judiciary Committee, Subcommittee on the Constitution and Civil Justice hearing entitled “Voter Suppression and Continuing Threats to Democracy” held on Thursday, January 20, 2022.

Context
The United States faces a crucial moment in our history as a representative democracy. During the last decade, from 2010 to 2019, 25 states enacted new voting restrictions and over the past two years 19 states enacted additional voting restrictions. During that same timeframe the U.S. Supreme Court’s decisions in cases such as Shelby County v. Holder (2013), Abbott v. Perez (2018), and Rucho v. Common Cause (2019) have greatly limited federal oversight—of both the executive and judicial branches—over how state legislatures draw political districts. Now, the country is amid the first round of redistricting after these developments and the 2020 census. As of this writing, there are 34 pending legal challenges to new political maps in 12 different states, with more sure to come. At FairVote, we argue that there is a better and more fair way to bring the voices of We The People to Capitol Hill and state legislatures across the country.

Legislative Recommendation
The Fair Representation Act is an important tool which should be used to combat voter suppression and other threats to democracy, such as extreme political polarization. First, the Act would help to mitigate many of the problems surrounding gerrymandering. For decades, under the Voting Rights Act (VRA) the U.S. has long used majority-minority districts to preserve the fair representation of the voices of racial and ethnic minorities. However, given the constraints handed down by the Supreme Court in the case referenced above, we cannot fully realize the goals of the VRA without revised
enabling legislation and significant changes to state laws across the country, as the federal bench is unwilling to adjudicate claims of political malfeasance in redistricting. Thus, the fairness of mapmaking on behalf of racial and ethnic minorities can no longer be effectively ensured within our current legal regime. The long-term solution, then, is not to determine the best way to encourage elected officials to draw better lines in the absence of oversight, but to create fewer lines for them to draw altogether. Multi-member districts (MMDs), which would elect either three or five Members of Congress from each, both decrease the number of opportunities that elected officials have to gerrymander and increase the likelihood that at least one of the Members elected from such a district would be a woman or a racial or ethnic minority. The Fair Representation Act outlines exactly how MMDs would be implemented in applicable states.

Second, the Fair Representation Act would decrease the extreme nature of the polarization of elected officials in Congress. Presently, gerrymandered winner-take-all districts render representatives more accountable to primary voters than the district as a whole, as districts are drawn to make a winner from the other party highly unlikely. As a result, Members are often punished for finding opportunities for compromise and have no incentive to heed the voices of voters in their own district who tend to vote for the other party or are a member of a minority community that does not constitute a majority of the district’s population. MMDs, along with the use of Ranked Choice Voting (RCV), would incentivize Members to seek support from all voters in the district, including racial and ethnic minority voters, and would decrease the incentive to engage in negative campaigning.

The Progress of Ranked Choice Voting
Despite these concerns which have led to the introduction of the Fair Representation Act, in some areas this country is making important progress toward creating a more representative and fair democracy. In testimony submitted to this Subcommittee nearly a decade ago, FairVote recommended legislation to empower states and localities to use fair representation voting methods to uphold minority voting rights. This session, the Protecting Our Democracy Act passed the House of Representatives with the Voter Choice Act as an amendment, which would give communities the option to reform their own elections by providing funding and technical support to state and local governments that want to switch to RCV. Importantly, we have found that RCV elections benefit both candidates and voters from racial and ethnic minority groups more than our present, first-past-the-post form of elections. Luckily, 9.6 million Americans had access to RCV in 2021 and this year RCV will reach 55 jurisdictions containing 10 million voters across the nation.

As voter suppression continues to impact the results of elections across the country, the need for fundamental reform will only grow more urgent. FairVote recommends the passage of the Fair Representation Act as one important tool in the fight to secure the access to meaningful elections for all Americans.
RANKED CHOICE VOTING ELECTIONS BENEFIT CANDIDATES AND VOTERS OF COLOR
About the Authors

The authors of this report are Deb Otis, FairVote senior research analyst, and Nora Dell, FairVote research analyst, with contributions by Chris Zawora and Omar Danaf.

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About FairVote

FairVote is a nonpartisan organization seeking better elections for all. We research and advance voting reforms that make democracy more functional and representative for every voter.

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Executive Summary

RANKED CHOICE VOTING ELECTIONS BENEFIT CANDIDATES AND VOTERS OF COLOR

This report examines how voters of various races and ethnicities interact with ranked choice voting (RCV) elections. Previous research has shown that RCV is associated with improved political representation for people of color; this report explores why this is. We studied the question from two perspectives—the candidates and the voters—and found that:

- **Candidates of color benefit from the round-by-round counting process.** Winning candidates of color, particularly those who are Black or Hispanic/Latino, grew their vote totals between the first and final ballot rounds at a higher rate than winning White candidates. Black and Hispanic/Latino candidates who went on to win grew their vote totals by 36% by the final round, compared to 28% among winning White candidates (see Figure 5). This indicates that candidates of color can build strong support among voters outside their traditional political bases (which RCV incentivizes) and benefit from round-by-round counting in RCV races, which translates to more victories for candidates of color.

- **Voters of color tend to rank more candidates than White voters.** In precincts with more voters of color, voters rank a higher percentage of candidates, indicating a willingness among communities of color to engage with the ranked ballot. In the 2020 mayoral election in Berkeley, CA, for example, Asian American and Pacific Islander (AAPI) and Hispanic/Latino voters were most likely to indicate their preferences on a majority of available rankings on their ballots. Over 70% of AAPI and Hispanic/Latino voters used a majority of rankings, while only about half of White voters did (see Figure 12).

- **Candidates of color see the strongest gains in districts with a majority of voters of color, including districts where the largest single bloc of voters is White.** This suggests that candidates of color are effectively winning votes outside of their own racial and ethnic groups and building broad support across their districts. Candidates of color won 63% of elections in districts where voters of color outnumbered White voters and in which the largest racial group of voters is White, and 66% of elections in districts where the largest racial group is voters of color (see Figure 3).

- **Candidates pay no penalty when they run against opponents of the same race or ethnicity.** Black candidates are more likely than other candidates to challenge people of the same race or ethnicity, but under RCV they don’t pay a penalty for doing so. Instead of dividing community support, Black candidates who run against other Black candidates in RCV elections have a higher win rate. Black candidates were elected in 67% of elections featuring multiple Black candidates but only 32% of elections with only one Black candidate. Candidates of other racial or ethnic backgrounds also experienced an increased win rate when they ran against candidates of the same racial or ethnic background (see Figure 4).
INTRODUCTION

Ranked choice voting (RCV) is a reform that seeks to make elections more fair for voters. Unlike standard election practices, which only allow voters to select one candidate, RCV gives voters the option to rank candidates in order of preference: first, second, third, and so forth. In the single-winner version of RCV, if a candidate receives more than half of voters’ first choices, that candidate wins, just like in any other election. However, if there is no majority winner after counting first choices, the race is decided by an “instant runoff.” The candidate with the fewest votes is eliminated, and voters who picked that candidate as “No. 1” will have their votes count for their next choice. This process continues until there is a majority winner, or a candidate who earns more than half of the votes.

Ranked choice voting is used in more than 20 jurisdictions in the United States and interest is growing. In 2020 alone, voters approved RCV ballot measures in Alaska and six U.S. cities, and voters used RCV in presidential primary elections in five states. So far in 2021, Vermont’s largest city voted to adopt RCV, at least a dozen Utah cities have adopted RCV, state lawmakers have introduced bills that would expand the use of RCV in 25 states, including one that has already become law, and RCV legislation is advancing at the federal level.

As of April 2021, more than 9.2 million voting-age citizens live in U.S. jurisdictions that either use or have adopted RCV and plan to implement it in their next round of elections. A slew of new RCV elections is on the horizon, including in New York City’s mayoral primary race in June 2021, which is anticipated to be the highest turnout RCV election in U.S. history.

This report considers the impact of single-winner RCV (also known as instant runoff voting) on communities of color, including why RCV delivers more representative outcomes than traditional plurality-winner elections.

Previous research has demonstrated that RCV leads to more candidates on the ballot and improved representation for people of color. Experts have offered many theories to explain this phenomenon. Some suggest that RCV removes the fear of splitting votes with candidates of the same background, which draws more diverse candidates to the field. Some say it lowers the cost of campaigning, because instant runoffs are less expensive than “two-round runoffs” and therefore draw candidates of more diverse means and backgrounds. Some say a contributing factor is that RCV moves the decisive election to the general election, when turnout is highest and most representative. And some say RCV decreases negative campaigning, which creates positive, issue-focused environments that are inclusive of a variety of voices, including those that have been historically underrepresented in public office.

In this report, we identify an additional factor previously unstudied: RCV gains occur due to the way candidates build support between rounds of RCV elections and the way voters use the ranked ballot.

First, we examined RCV from the candidate perspective by measuring how candidates of different races and ethnicities consolidate support through the instant runoff process. For this analysis, we considered all single-winner ranked choice voting races in the United States, which included multiple rounds of tabulation. When candidates earn additional votes from voters’ second- or third-choice preferences during the RCV tabulation, we treated those votes as gains because candidates would have been unlikely to earn those votes in plurality-winner elections.

Second, we examined the way voters interact with ranked ballots to measure whether some use more rankings than others or make more errors on the ballot. These factors point to strong engagement with ranked choice voting in communities of color, which builds their political power and improves their representation in public office.

CANDIDATE DIVERSITY IN RCV ELECTIONS

Ranked choice voting has been in use in the United States in its single-winner instant runoff format since San Francisco adopted it in 2004. Since then, 1,422 candidates have run in 398 single-winner RCV elections in 27 jurisdictions across the country. (This figure includes some duplicates because some candidates ran in multiple RCV elections.) The majority (58%) of these candidates identified as White; 16% are Black; 10% are AAPI; 10% are Hispanic or Latino; 3% are Middle Eastern or North African; and 2% are mixed race or another race.

The figure below shows the win rate for each racial or ethnic group in our study, considering only elections which contained at least one candidate of the given racial or ethnic group. By this measure, Figure 2 shows small variances in win rate across different racial or ethnic groups, but given the sample size of RCV elections in the U.S., the differences among groups of color are not statistically significant.

* Does not include 33 candidates for whom we were unable to identify race or ethnicity

The figure below shows the win rate for each racial or ethnic group in our study, considering only elections which contained at least one candidate of the given racial or ethnic group. By this measure, Figure 2 shows small variances in win rate across different racial or ethnic groups, but given the sample size of RCV elections in the U.S., the differences among groups of color are not statistically significant.

* Sample size is too small to generalize findings to broader population.
The win rates for candidates of color in Figure 2 are higher than the win rates in the seven non-RCV “control cities” studied by John, Smith, and Zack (2018), which also found that RCV increases the likelihood of candidates of color winning elections. In those non-RCV cities, Black candidates won 38% of elections they entered, AAPI candidates won 33%, and Hispanic or Latino candidates won 46%.

As win rates under RCV varied, so did the racial and ethnic composition of the districts in which RCV elections occurred. About half of RCV elections (53%) were held in districts where voters of color outnumber White voters, and candidates of color won more elections in these districts. Notably, even in majority-non-White districts where White residents nonetheless comprise a plurality of voters, candidates of color won almost two-thirds of races. This indicates that candidates of color perform well outside of their own racial and ethnic groups.

![Figure 3: Race or Ethnicity of Winners by District Composition](image)

<table>
<thead>
<tr>
<th>District Composition</th>
<th>White winners</th>
<th>Winners of color</th>
</tr>
</thead>
<tbody>
<tr>
<td>All districts (n = 1422)</td>
<td>41%</td>
<td>59%</td>
</tr>
<tr>
<td>Majority-White districts (n = 648)</td>
<td>15%</td>
<td>85%</td>
</tr>
<tr>
<td>Majority-non-White districts, largest group is White (n = 406)</td>
<td>63%</td>
<td>33%</td>
</tr>
<tr>
<td>Majority-non-White districts, largest group is of color (n = 278)</td>
<td>66%</td>
<td>-</td>
</tr>
</tbody>
</table>

**RCV ELECTIONS PREVENT “SPLIT VOTES”**

We also tested whether any groups pay a penalty when elections feature multiple candidates of the same racial or ethnic group. This is an important metric because candidates in plurality-winner elections sometimes experience splintered support when running against candidates with similar backgrounds, which can deny representation to their communities.

RCV elections, on the other hand, enable communities of voters to elect representative candidate(s) even if their top choices differ. Voters don’t have to worry about choosing among like-minded candidates and “splitting votes.” Their backup choices still count to help elect candidates reflecting the common backgrounds or interests of their communities. Similarly, community leaders don’t have to engage in back-room strategizing, pressuring worthy candidates to “wait their turn” in order to prevent vote-splitting. In our analysis, every racial and ethnic group studied increased its win rate in elections featuring multiple members of that group; none experienced vote-splitting. This is a key benefit of RCV elections; in short, RCV elections help communities build power, while traditional elections can divide them.

Black candidates are more likely than other candidates of color to run against other candidates of the same race or ethnicity, but they do not pay a penalty for doing so. A Black candidate won in 67% of elections that featured two or more Black candidates, compared to only 32% of elections with only one Black candidate.
Figure 4: Win Rate for Racial or Ethnic Groups When Multiple Members of Same Group Compete

<table>
<thead>
<tr>
<th>Race or Ethnicity</th>
<th>1 Candidate of given race or ethnicity</th>
<th>Win Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>White</td>
<td>63%</td>
<td>81%</td>
</tr>
<tr>
<td>Black</td>
<td>32%</td>
<td>67%</td>
</tr>
<tr>
<td>Asian American or Pacific Islander</td>
<td>51%</td>
<td>60%</td>
</tr>
<tr>
<td>Hispanic or Latino</td>
<td>42%</td>
<td>61%</td>
</tr>
</tbody>
</table>

Sample sizes for bars, from left to right, are 108, 218, 58, 54, 65, 25, 71, and 25 elections

MULTI-ROUND RCV ELECTIONS HELP CANDIDATES OF COLOR BUILD COMMUNITY SUPPORT

In addition to measuring victors in RCV elections, we also explored the degree to which candidates increased their vote totals between the first and final rounds to determine which most effectively consolidated support. A greater increase in vote totals between rounds indicates that candidates are able to effectively appeal to other candidates’ supporters, as well as multiple constituencies outside of their “base” or “first-choice” supporters. This is a sign of positive engagement with different communities within a candidate’s district. While many RCV elections were decided on first choices alone, more than half (53%) required multiple rounds to identify a winner.

We tallied votes gained between candidates’ first and final rounds to assess the degree to which they built support across communities. All candidates who were active for multiple rounds increased their vote totals by an average of 22% beyond their first-round totals; winning candidates increased their vote totals by 31%.

On average, candidates of color increased their vote totals between rounds by a greater percentage than White candidates. The following chart shows the average amount by which winning candidates increased their vote totals
Black and Hispanic/Latino candidates grew their vote totals the most between rounds; AAPI candidates also beat the average. These candidates’ larger increases suggest that they build consensus between rounds by appealing to other candidates’ supporters and, by proxy, multiple constituencies and communities. In other words, RCV enables candidates of color to consolidate support and increase their communities’ political power; on average, they earn a greater share of votes in RCV elections than in choose-one elections.

**SPOTLIGHT ON BLACK CANDIDATES IN RCV ELECTIONS**

Black candidates’ ability to achieve and maintain political power, particularly as it relates to majority rule, has been a key discussion when considering implementing RCV. Some leading political voices have expressed concern that the majority rule principle, which suggests that every candidate for a single office should win with more than 50% of the vote, has resulted in elections that galvanize votes around White candidates who would have otherwise split the vote and prevent Black candidates from being elected. These concerns are primarily raised in discussion of runoff elections but have been extended to the ranked choice voting debate as well.

To date, 226 Black candidates have run in RCV races; together, they represent 16% of all RCV candidates, the second-largest group of candidates by race or ethnicity. About four in five (79%) Black candidates ran in districts where voters of color collectively outnumbered White voters, whereas only 36% of White candidates did. Overall, Black candidates won 23% of the contests they entered and 48% of contests with at least one Black candidate resulted in a Black winner. However, Black candidates’ win rate varies by district composition. Figure 6 shows they had the greatest success in districts with more voters of color than White voters and whose largest group was a community of color.
Figure 6: Likelihood of an Election Resulting in a Black Winner, by District Composition

<table>
<thead>
<tr>
<th>District Composition</th>
<th>Likelihood (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Majority-White districts</td>
<td>30%</td>
</tr>
<tr>
<td>Majority non-White districts (total)</td>
<td>54%</td>
</tr>
<tr>
<td>Majority non-White districts, largest group is White</td>
<td>39%</td>
</tr>
<tr>
<td>Majority non-White districts, largest group is of color</td>
<td>73%</td>
</tr>
</tbody>
</table>

Sample sizes for bars, from left to right, are 27, 81, 44, and 77 candidates.

Most RCV elections in majority-non-White districts (58%) go to multiple rounds, while only 47% of elections in majority-White districts do. Districts where voters of color outnumber White voters also have more diverse voters, as measured by the number of racial or ethnic groups that make up at least 10% of the district. Elections in these diverse districts were less likely to result in an outright majority winner in the first round. This explains the larger vote increases among Black candidates, 79% of whom ran in diverse districts with a majority of voters of color, and reflects Black candidates’ ability to build power across varied constituencies.

Figure 7: Increase in Vote Total for Black and White Candidates by District Composition

<table>
<thead>
<tr>
<th>District Composition</th>
<th>Increase in Votes (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Majority-White district</td>
<td>21%</td>
</tr>
<tr>
<td>Majority-minority district, largest group is White</td>
<td>23%</td>
</tr>
<tr>
<td>Majority-minority district, largest group is of color</td>
<td>22%</td>
</tr>
</tbody>
</table>

Sample sizes for bars, from left to right, are 525, 47, 213, 85, 83, and 94 candidates.

CASE STUDY: BUILDING COMMUNITY POWER IN NEW YORK CITY

New York City voters overwhelmingly approved an RCV ballot measure in 2019 with particularly strong support from Black and Hispanic/Latino voters, and the city held its first RCV elections in the spring of 2021. This case study examines an open-seat race for the 31st district City Council seat in Queens, one of the city’s five boroughs. Nine candidates sought the office, and no clear winner emerged from first choices alone, but first-round leader Selvena Brooks-Powers went on to win a strong majority after candidate eliminations.
Brooks-Powers began with a narrow lead of 38% of voters’ first choices, only three points ahead of her nearest competitor, Pesach Osina, who had garnered 34% of first choices. As trailing candidates were eliminated, Brooks-Powers increased her vote total by 36%, while Osina’s vote total increased by only 7%.

Not only was Brooks-Powers the first-round leader, but she also demonstrated a strong breadth of support across the district by the final round. Her largest gain occurred in the final round when Manny Silva was eliminated. Silva voters’ ballots transferred to Brooks-Powers at a rate four times higher than they did to Osina, propelling Brooks-Powers to a 59% – 41% win in the final round.

Figure 8: Round-by-Round Results from New York City’s 31st Council District, 2021

<table>
<thead>
<tr>
<th>Candidate</th>
<th>Round 1</th>
<th>Round 2</th>
<th>Round 3</th>
<th>Round 4</th>
<th>Round 5</th>
<th>Round 6</th>
<th>Round 7</th>
<th>Round 8</th>
<th>Round 9</th>
</tr>
</thead>
<tbody>
<tr>
<td>Selvena Brooks-Powers</td>
<td>34%</td>
<td>34%</td>
<td>34%</td>
<td>34%</td>
<td>34%</td>
<td>35%</td>
<td>35%</td>
<td>37%</td>
<td>41%</td>
</tr>
<tr>
<td>Pesach Osina</td>
<td>10%</td>
<td>10%</td>
<td>10%</td>
<td>10%</td>
<td>11%</td>
<td>12%</td>
<td>13%</td>
<td>15%</td>
<td></td>
</tr>
<tr>
<td>Manny Silva</td>
<td>5%</td>
<td>5%</td>
<td>5%</td>
<td>5%</td>
<td>6%</td>
<td>6%</td>
<td>7%</td>
<td>8%</td>
<td></td>
</tr>
<tr>
<td>LaToya Benjamin</td>
<td>5%</td>
<td>5%</td>
<td>5%</td>
<td>5%</td>
<td>5%</td>
<td>5%</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sherwyn James</td>
<td>3%</td>
<td>3%</td>
<td>3%</td>
<td>3%</td>
<td>3%</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Shawn Rux</td>
<td>1%</td>
<td>1%</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Nancy Martinez</td>
<td>1%</td>
<td>2%</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Latanya Collins</td>
<td>1%</td>
<td>1%</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Nicole Lee</td>
<td>1%</td>
<td>1%</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Write-in candidates</td>
<td>0.3%</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

This election, held in a predominantly Black district, attracted seven Black candidates; two others—Osina and Nancy Martinez—are Orthodox Jewish and Latina, respectively. New York City’s prior voting method could have led to vote-splitting among the Black candidates because they appealed to a similar base of support, and could have caused a candidate of a different race to win, denying political representation to the community. Thanks to RCV, candidates were free to run without fear that their presence would harm their community by dividing its support. In the end, Brooks-Powers took office with a clear majority mandate and the knowledge that she has the full support of her community.

“Just because someone had a different number one, that’s okay,” Brooks-Powers said. “Because it’s about the community and coming together.”

**CASE STUDY: A COME-FROM-BEHIND WIN IN SAN FRANCISCO**

A diverse field of seven candidates in the race for San Francisco’s 7th district Board of Supervisors led to a unique outcome: a winner who began in third place, a come-from-behind victory that has only occurred once before in U.S. RCV history. In this case study, we examine how RCV led to the election of a consensus candidate that other voting methods would have rejected.

On Election Day, Myrna Melgar gradually built support over a series of rounds, regularly increasing her vote total by more than that of her opponents. In the first round, she earned 20% of first-choice preferences, narrowly trailing Joel Engardio (24%) and Wlesen Nguyen (27%). Melgar moved into second place in the fourth round after capturing the most transfer votes from supporters of Emily Murase. Two rounds later, Nguyen was eliminated, and nearly two-thirds of her transfer ballots went to Melgar. She finally won with 53% of active votes.
As discussed later in this paper, Hispanic/Latino voters and Black voters in the 7th district ranked more candidates than White voters. This high level of ranking-usage by voters of color likely helped Melgar build enough support to win—and become the first Latina elected to the Board of Supervisors without first being appointed.

Melgar is what is known as a “Condorcet Winner,” meaning she was preferred to every other candidate in a hypothetical head-to-head matchup. When compared to any other candidate in the race, Melgar was ranked higher by most voters who expressed a preference between the two. This is a case in which RCV identified the Condorcet Winner and elected a winner with broad community support, when neither a plurality election nor a two-round runoff would have done so.

VOTER DEMOGRAPHICS EXPLAIN VOTER BEHAVIOR

The two case studies below focus on RCV elections in 2020 to identify how different racial and ethnic voters interact with RCV ballots.

Because we do not know which voters cast which ballots, we used statistical analysis to draw conclusions about the behavior of different groups; specifically, we compared precinct demographics to the types of ballots cast in each precinct.

This section considers the cities that held citywide RCV elections or RCV elections in at least half of their districts and for which we have precinct-level ballot data. This leaves us with elections in four cities to consider: the mayoral election in Berkeley, CA; the at-large City Council election in Oakland, CA; the at-large City Council election in Eastpointe, MI; and an aggregate of the five district-level Board of Supervisors elections in San Francisco that included three or more candidates.

Ballot data were provided by election administrators in the form of “cast vote records,” a method in which devices, like ballot scanners, produce election results. Demographic data is based on citizen voting age population (CVAP) data provided by the U.S. Census Bureau.
CASE STUDY: ENGAGING WITH THE RANKED BALLOT IN 2020

Voters in RCV races may rank as many as they choose. In practice, voters typically express multiple preferences when given the option. In all U.S. RCV races, a median of 88% of voters used multiple rankings, indicating an understanding and enthusiasm for the ranked ballot among voters in general. However, ranking usage varied, depending on voter demographics and other factors. Figure 10 shows how precincts’ racial and ethnic demographics relate to the number of candidates ranked on precinct ballots.

The points in the figure above represent the relationship between a precinct’s demographics and the voter behavior in that precinct. The lines are linear regressions, or the best fit of the data points to a straight line. Dark purple lines represent the behavior of White voters, where downward-sloping lines indicate a negative relationship, meaning that voters in precincts with a higher share of White residents tend to rank fewer candidates on their ballots.

Conversely, other racial and ethnic groups exhibit a positive relationship. Ballots from precincts with more Black voters (shown in orange), for example, rank more candidates, as indicated by the upward-sloping lines. Note that only relationships indicated with an asterisk are considered statistically significant and are therefore generalizable to the broader population. We recognize that the findings shown above are complicated by the fact that we’re comparing across more than two racial or ethnic groups, but we believe this is still a useful measurement.

Additionally, we drilled further down into the San Francisco results. Above, Figure 10 depicts an aggregate of the five Board of Supervisors districts that held elections with at least three candidates. Figure 11, meanwhile, examines district-by-district behavior in each of those elections.

The results varied across districts, likely because of the unique dynamics of each election. AAPI voters, for example, behaved differently in districts 1 and 3 (as noted in light blue above). That may be because four AAPI candidates ran in District 1, including two Chinese American candidates who cross-endorsed each other using the race-based appeal, “We both want to fight for our Chinese American community.” That may have caused AAPI voters in District 1 to rank more candidates than they did in District 3, where no AAPI candidates were on the ballot and where there is a significant downward trend in precincts with larger AAPI populations.

Ultimately, the charts above show that ranking behavior by racial and ethnic groups depends on the context of each election; overall, though, voters of color are likely to use more rankings than White voters, as indicated by the positive relationships above.

Next, we explored this data using ecological inference, a method typically used in the voting rights context to determine whether racial and ethnic groups behave differently from one another. This method attempts to extrapolate individual behavior from aggregate data, and we used it here because it allows us to compare individual-level estimates for each racial and ethnic group. With this method, we examined the likelihood that voters would rank at least half of the candidates on their ballots.
The points represent our best estimates for the percentage of voters of each racial and ethnic group that ranked at least half of the candidates. The vertical bars represent 95% credible intervals, i.e., 95% of likely values fell within that range. Based on this method, use of rankings is context-dependent, though White voters rarely, if ever, make the most use of the ranked ballot.

Both methods above indicate that voters of color are likely to use more rankings on their ballots than White voters, demonstrating a strong understanding of how to use a ranked ballot and a willingness to engage with the RCV process. This behavior is a key factor in improved representation in RCV elections.

**CASE STUDY: BALLOT ERROR RATE IN 2020**

Ballot error rates help measure how well voters understand voting methods and whether they are able to cast ballots that count for their intended candidates.

For this case study, we examined “first-round overvotes,” which occur when ballots indicate more multiple candidates as first choices. (The rate of overvotes in RCV elections is the most comparable metric to the rate of overvotes in single-choice elections). In most RCV jurisdictions, including all cities in this case study, ballots with first-round overvotes were immediately disqualified because voters’ intent cannot be determined.

Previous research has found differing rates of ballot error among racial and ethnic groups. Political scientists Francis Neely and James McDaniel found in 2015 that while overvotes appear disproportionately in precincts with more Black residents, the pattern of overvoting by race is similar to the pattern of overvoting in non-RCV elections. On the other hand, a study conducted by political scientist Jason Maloy in 2020 found the opposite: that ranked ballots produce more valid votes than choose-one ballots and are associated with smaller discrepancies in error-proneness by race and ethnicity.

This case study examines the same RCV elections studied in our multiple-rankings analysis to determine the error-proneness of voters in 2020 elections. Figure 13 shows that the pattern of first-round overvotes by race or ethnicity varies depending on context, with patterns of overvoting by race and ethnicity appearing in some but not all cities.

Figure 13: Rate of First-Round Overvotes by Precinct Demographics

<table>
<thead>
<tr>
<th>Precinct</th>
<th>White</th>
<th>Black</th>
<th>Hispanic or Latino</th>
<th>AAPI</th>
</tr>
</thead>
<tbody>
<tr>
<td>Oakland</td>
<td><img src="image1.png" alt="Graph" /></td>
<td><img src="image2.png" alt="Graph" /></td>
<td><img src="image3.png" alt="Graph" /></td>
<td><img src="image4.png" alt="Graph" /></td>
</tr>
<tr>
<td>San Francisco</td>
<td><img src="image5.png" alt="Graph" /></td>
<td><img src="image6.png" alt="Graph" /></td>
<td><img src="image7.png" alt="Graph" /></td>
<td><img src="image8.png" alt="Graph" /></td>
</tr>
</tbody>
</table>

Percent of citizen voting age population of given race or ethnicity

* Asterisks indicate statistical significance at p < .05, which means the pattern likely applies to the broader population.

Downward-sloping lines are desirable here because they represent racial and ethnic groups whose overvote rates appear to decrease as their share of the population increases. White voters (indicated in purple) made fewer overvotes than members of other racial or ethnic groups in Oakland and San Francisco but not in Eastpointe or in Berkeley.

In Eastpointe, which has a much larger share of Black voters than other cities in this analysis, Black and White voters were roughly equally error-prone; the populations of other racial and ethnic groups in the city, meanwhile, are too small to make meaningful comparisons.

Next, we used ecological inference to estimate how many voters in each racial and ethnic group made first-round overvotes. Figure 14 estimates the likelihood of first-round overvotes by racial and ethnic group.
Again, error rate depended on context. There appears to be no statistically significant difference between the error rates of White and Black voters in Eastpointe and Oakland, but there are differences in Berkeley and San Francisco although all error rates are small in absolute terms.

Note: Please treat Eastpointe estimates for AAPI and Hispanic/Latino voters with extreme caution. The confidence intervals extend beyond the borders of the chart because these populations are too small to make a precise estimate.
CONCLUSION

Americans have embraced ranked choice voting on an exponential scale, with massive potential for even more Americans ranking their ballots next year. The number of voters with access to ranked choice voting ballots has increased seven times over since 2010. Given more than 60 local bills for ranked choice voting access across at least 29 states, millions more voters may have access to ranked choice voting ballots in 2022.

Further, more candidates of color are empowered to run for office than ever before. A record number of Black women—130—ran for congressional office in 2020. The Associated Press made note in 2020 that “the Deep South is fielding more Black candidates than it has since Reconstruction.” This is an encouraging trend; more candidates of color should feel empowered to run for office. However, the benefits of a competitive field with multiple candidates of color—a stronger marketplace for debate, more choices for voters—could also yield the downsides of a crowded field. Standard plurality elections threaten to split the vote among multiple candidates.

If more candidates of color are running for office, and more communities are embracing ranked choice voting, this report’s findings indicate a national embrace of the reform is well-timed; it will even the playing field for candidates facing competitive elections, and it will empower voters to make determinations based on their values and ideals, rather than calculate electability, in the voting booth.

Additional research will be vital to ensure the benefits of ranked choice voting are consistently favorable to communities of color across different geographic regions and over time, especially as ranked choice voting is implemented in more cities with diverse constituencies and as it evolves from a novel reform to standard practice.

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