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S. HRG. 117–826

RESTORING THE VOTING RIGHTS ACT AFTER BRNOVICH AND SHELBY COUNTY

HEARING

BEFORE THE

SUBCOMMITTEE ON THE CONSTITUTION

OF THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ONE HUNDRED SEVENTEENTH CONGRESS

FIRST SESSION

JULY 14, 2021

Serial No. J–117–28

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RESTORING THE VOTING RIGHTS ACT AFTER BRNOVICH AND SHELBY COUNTY

WEDNESDAY, JULY 14, 2021

UNITED STATES SENATE
SUBCOMMITTEE ON THE CONSTITUTION,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Subcommittee met, pursuant to notice, at 3:14 p.m., in Room 226, Dirksen Senate Office Building, Hon. Richard Blumenthal, Chair of the Subcommittee, presiding.

Present: Senators Blumenthal [presiding], Feinstein, Whitehouse, Ossoff, Cruz, Cornyn, and Lee.

Also present: Senators Leahy, Klobuchar, Hirono, and Padilla.

OPENING STATEMENT OF HON. RICHARD BLUMENTHAL, A U.S. SENATOR FROM THE STATE OF CONNECTICUT

Chair BLUMENTHAL. The Subcommittee on The Constitution will come to order.

Let me first apologize to my colleagues and to the witnesses for my delay caused by a number of circumstances, including most recently a stopped subway tram. If anything go—can go wrong, it will go wrong. I do want to thank all of you for being here today.

Yesterday, President Biden issued in effect a call to action, an urgent plea to protect democracy amidst an onslaught of State laws restricting voting rights. He declared that, quote, "We are facing the most significant test of our democracy since the Civil War," end quote. We must, President Biden said, have quote, "the will to save and strengthen our democracy."

During the Civil Rights Movement, the President—then-President Johnson made a similar call to action. In the summer of 1965, State troopers mercilessly attacked John Lewis and 600 others as they crossed the bridge in Selma, Alabama in peaceful protest of discriminatary—discriminatory voting laws. In the wake of the attack and as the Nation came together to grieve, President Johnson called for an end to voting discrimination in America. Two days later, Congress announced it would take up that call in legislation. Just 5 months after Bloody Sunday, as it came to be known, the Voting Rights Act was passed by Congress with broad bipartisan support.

The purpose of today's hearing is to heed President Biden's call. A call to action to protect our democracy, just as Congress heeded President Johnson's call in 1965. We're going to explore the real-world impact of two deeply flawed anti-Democratic Supreme Court

decisions undermining the Voting Rights Act, *Shelby County* in 2013 and *Brnovich* just 2 weeks ago.

This morning, I met with a number of deeply courageous members of the Texas House of Representatives. They shared their harrowing stories of the impact of the Supreme Court's recent decision in Texas, which has some of the most extreme voting restrictions in the country: efforts to purge the voting rolls, including efforts to purge tens of thousands of newly naturalized citizens eager to exercise their constitutional right to vote as Americans; efforts to criminalize the right to vote, putting people in prison for improperly filing a provisional ballot; efforts to limit voting hours and mail-in balloting, which are critical to opportunities to vote for communities like medical professionals, individuals serving in the military, and veterans.

Sadly, there are similar stories from States across the country. Those stories include the threats of criminal prosecution and intimidate the exercise of fundamental rights. What so deeply impressed me about the stories I heard this morning from those members of the Texas Legislature, and a number of them are here in the audience today, is the effect on their exercise of rights—their exercise of rights as American citizens. We cannot let these attacks on democracy stand.

Before *Shelby County* and *Brnovich*, the Voting Rights Act was immensely successful. The Department of Justice and American voters were able to use the Voting Rights Act to halt well over 1,000 discriminatory election rules. The Voting Rights Act became known as the crown jewel of the Civil Rights Movement. In subsequent decades, the Voting Rights Act was reauthorized five times, five times with bipartisan support.

Beginning in the 1980s, the courts began to chip away at its protections. On July 1, the Supreme Court struck its latest blow gutting the power of section 2 of that Voting Rights Act in *Brnovich v. Democratic National Committee*. The 6-to-3 partisan decision was a stunning display of judicial overreach and activism. The text of section 2 of the Voting Rights Act plainly requires the members of every racial group have equal voting opportunities.

Yet the Court's decision on *Brnovich* is completely untethered from the text that Congress enacted. As Justice Kagan said in her powerful dissent, the majority did not like the statute Congress wrote so it, quote, "wrote its own set of rules limiting section 2 from multiple direction," end of quote. *Brnovich* follows the Court's equally devastating partisan 5-to-4 decision in *Shelby County* in 2013.

Following *Shelby County*, States have been free to pass voting restrictions without preclearance process to assess whether the changes are racially discriminatory. They have. In 2021 alone, 17 States already passed 28 laws to restrict voting rights. Approximately 21,000 polling places nationwide that serve voters on election day have been eliminated since *Shelby County*, and millions of voters have been purged from the voter rolls.

The Supreme Court is at a low point of legitimacy when its decisions undermine the institution of our democracy. In *Shelby County* and *Brnovich*, the Supreme Court has methodically undermined all

the tools Congress crafted in the Voting Rights Act to fight against discrimination in voting.

The right to vote is not and it should never be a partisan endeavor, not in this great country, the United States of America. If the Senate is unable to meet this moment and reauthorize the Voting Rights Act because of Republican opposition to voter protections that have been passed with overwhelming bipartisan support for over 50 years, we are forced to consider all of our options, including eliminating the filibuster.

Indeed, I've long been in favor of eliminating the filibuster. It was one of my first votes as a Member of the U.S. Senate. I was 1 of only 12 that voted to eliminate the filibuster. I have seen over the past 10 years, one by one, many, many of my colleagues reached the same conclusion that reform is necessary because the truth is that voting rights are truly bipartisan. They are widely supported throughout American society on the left, the right, center. In the private and public sectors, polling shows the vast majority of voters support equal access to the ballot box.

Just today, more than 160 companies have released a public letter of support for the John Lewis Voting Rights Advancement Act. Protecting the right to vote is a matter of living up to America's founding ideals that our Government, quote, "derives its just powers from the consent of the governed," end quote.

As a tsunami of voter suppression bills crashes on this Nation, my deepest hope is that today we can renew a bipartisan commitment to protecting voting rights in this country. I turn to the Ranking Member.

STATEMENT OF HON. TED CRUZ,
A U.S. SENATOR FROM THE STATE OF TEXAS

Senator CRUZ. Thank you, Mr. Chairman. It has long been said that hypocrisy is the tribute that vice pays to virtue. In few areas, is this more clearly true than when it comes to voting rights? Today we see Democrats giving long emotional speeches about protecting the right to vote. Today's congressional Democrats do not believe in the right to vote. They do not believe in democracy, and they are championing efforts to take away the right to vote from American citizens.

The rhetoric that is being used by Joe Biden, by Chuck Schumer, by other Democrats, is consistently inflammatory. Indeed one of the phrases that they like to use today is, "Jim Crow 2.0." Ironically and inadvertently, there's some truth to what they're saying because we do have legislation pending before Congress that would indeed be, "Jim Crow 2.0."

It's worth asking what was, "Jim Crow 1.0." "Jim Crow 1.0," were a series of racist laws that were written by Democrats, that were enforced by Democrats, whose purpose was to prevent the voters from ever voting Democrats out of power. Jim Crow was offensive. It was racist. It was bigoted. It was wrong. It was the Democratic party who wrote, enforced, and implemented it. What's "Jim Crow 2.0." It's the latest efforts of Democrats to write laws to prevent the voters from voting Democrats out of power.

Before the Senate is pending S. 1, what the authors have or willingly entitled the "For the People Act" but many are rightly calling

it the "Corrupt Politicians Act." The only objective of the Corrupt Politicians Act is to keep Democrats in power for the next hundred years, to take away the right of American voters to vote Democrats out of power. How does it do that? "Corrupt Politicians Act" would strike down every voter ID law in the country. Eighty percent of Americans support voter ID. Sixty percent of African Americans support voter ID.

What would the "Corrupt Politicians Act" do? Repeal every one of those laws. Mind you, this is while Democrats are saying, "We support the right to vote, so we're going to take away the decision made by the voters to enact voter ID laws." What else does the "Corrupt Politicians Act" do? Twenty-nine States had prohibited ballot harvesting.

Ballot harvesting is the corrupt practice where you send operatives to collect the ballots of others. A paid operative, for example, from the DNC will go into a nursing home, will collect hundreds of ballots from seniors, some of whom may no longer be competent to make a decision.

The reason 29 States have prohibited it is that it invites fraud. In an unscrupulous operative, it's very simple for that operative with a diminished—someone with diminished capacity for them to vote the ballot the way they wanted to. If someone has the temerity to vote for the other side, the corrupt operative can just throw that ballot in the trash and never mail it in.

If you actually cared about the integrity of elections, you would want to stop ballot harvesting. What does the "Corrupt Politicians Act" do? Strikes down every law that prohibits ballot harvesting and mandates it nationwide. If the Democrats who say they protect the right to vote believed it, why do they want to strike down what the voters chose to adopt which is protecting the integrity of their elections?

The "Corrupt Politicians Act" automatically registers to vote every single person who interacts with the government in any way. That means if you get an unemployment check, if you get a welfare check, if you have a driver's license, if you go to a public college or university, bingo, you're automatically registered to vote. What is the predicted and, in fact, intended consequence of that? That millions of illegal immigrants would be automatically registered to vote.

In fact, the "Corrupt Politicians Act" explicitly immunizes the State officials who would be registering illegal immigrants to vote. When you register millions of illegal immigrants to vote, you are stealing the right to vote from American citizens. That is not protecting the right to vote. That is stealing the right to vote.

The "Corrupt Politicians Act" mandates that felons all across the country be allowed to vote. Because Democrats have made the decision that if millions of illegal immigrants and millions of felons and murderers and rapists and child molesters are voting, they believe they are likely to vote for Democrats.

Just a moment ago, the Chairman said that voting rights legislation should not be partisan. The "Corrupt Politicians Act" is nakedly partisan. What really admits the entire joke, Federal Election Commission, when it was enacted in the wake of Watergate, it was designed to be bipartisan, three Republicans, three Demo-

crats. What does the "Corrupt Politicians Act" do? Makes it partisan. Makes it three Democrats and two Republicans, so that Chuck Schumer would have the Federal elections agency as an attack dog to use as a political weapon not to protect integrity, not to follow the law, but to ensure that Democrats can never be beaten, and the voters don't have a right to vote.

When Congressional Democrats talk about *Shelby County* and wanting to make every jurisdiction in America subject to DOJ preclearance, understand what that means. That means your State legislature in your home doesn't have the ability to pass laws concerning voting without getting an unelected bureaucrat in the Department of Justice to sign off on it first.

Mind you, this is after Joe Biden is nominated and Senate Democrats have confirmed extreme partisans to the Department of Justice. Kristen Clarke, who is a left-wing radical activist, would be in charge of voting laws all across the country with the ability to stop any elected legislature from passing laws concerning voting.

I ask you if you actually believe the rhetoric from Democrats that you wanted to protect the right to vote, why the hell would you say you can't vote in the State legislatures unless an unelected Democrat who's not accountable to the people says it's okay?

This is not about the right to vote. We heard some stringent rhetoric about the Supreme Court's *Brnovich* decision. I'll tell you, I was proud to lead an amicus brief for 11 Senators in the *Brnovich* case. State of Arizona quite reasonably prohibited ballot harvesting because ballot harvesting invites fraud and is corrupt. The Supreme Court, by vote of 6-to-3, agreed with the position that I advocated on behalf of 11 Senators that States have the authority to protect the integrity of their election. We should protect everyone's right to vote.

I will note, by the way, the civil rights decision—legislation that has been adopted, the Civil Rights Act of 1964, a significantly greater percentage of Republicans voted for it than did Democrats. Eighty-two percent of Republicans in the Senate voted for the Civil Rights Act of 1964; sixty-nine percent of Democrats did.

We should protect the right to vote, and that means not striking down commonsense voter integrity laws. That means not subjecting elected State legislatures to oversight by unelected bureaucrats. That means protecting the right to vote for everyone regardless of race, regardless of ethnicity. One of the ways you protect the right to vote is enacting commonsense protections to stop that right from being stolen. Unfortunately, congressional Democrats are not interested in doing that.

Chair BLUMENTHAL. Thank you, Senator Cruz. I understand some of the other Members of the Committee may want to make an opening statement. Senator Leahy is recognized.

OPENING STATEMENT OF HON. PATRICK J. LEAHY, A U.S. SENATOR FROM THE STATE OF VERMONT

Senator LEAHY. Thank you, Senator. I thought now we have heard the rhetoric, let's go to the reality. I look at my State, which has some of the most open voting anywhere both in how you can qualify and who can vote. We do everything possible for open voting, times of voting, mail-in voting.

Does this get a partisan result? Last year, we elected a Republican as Governor, a Democrat as Lieutenant Governor. It goes back and forth. In my—it's also the only State that's elected only one Democrat to the U.S. Senate, the only State in union, that's me.

I have no problems with the—with the way we do it, but we also have one of the highest percentages of voter turnout of any State in the Union, because people know they can vote, they're encouraged to vote, and they'll be able to vote, old, young, no matter what their nationality, they can vote.

It really frustrates me when I see so many States who seem to be doing everything possible to limit the ability of people to vote, except for the particular ones they want. Mr. Chairman, I thank you for holding this hearing about what we have to do to restore the Voting Rights Act in response to the Supreme Court's sustained effort to cripple it.

The VRA, as one of its party's greatest legislative achievements, has enjoyed overwhelming bipartisan support, Democrats and Republicans alike, for entirely—virtually its entire existence. As an affront to the world of Congress, the two very partisan decisions have gutted the landmark law making our democracy accessible to millions who have wrongfully been shut out from it, and these decisions want to shut them out again.

In some ways, the *Brnovich* decision a few weeks ago didn't surprise me. It involved the same playbook as the disastrous *Shelby County* decision of 2013, where a partisan majority of the court replaced Congress's clear bipartisan will with its own and gutted section 5 of the Voting Rights Act. Like *Shelby County*, the *Brnovich* decision ignored the well-established intent of Congress and invented seemingly out of thin air new hurdles around section 2 of the VRA effectively strangling it.

Let's get clear. Gutting section 5 and section 2 of the VRA is not some exercise in judicial nibblings around the margins of the VRA to somehow just improve a few little things. Section 5 and section 2 are the vital organs of the law. Section 5 empowers the Justice Department to stop discriminatory changes to voting procedures from taking effect, something that was supported by both Republicans and Democrats in the past, no matter which party held the Presidency. Section 2 empowers ordinary Americans to seek redress in court against voting changes discriminating against minority voters.

The partisan majority of the Supreme Court knew exactly what it was doing by nullifying section 5 and section 2 of the Act. Without them, the VRA is on life support. We the people are left with very few ways to protect our precious right to vote.

Of course, the *Brnovich* decision could not have come in a worse moment. Empowered by the *Shelby County* decision, fueled by the former President's big lie that the 2020 election was stolen from him, dozens of States have rushed to enact border suppression laws. With each passing week, literally, tens of thousands of Americans are having their right to vote chipped away. It's already a fire alarm far from America's voting rights before the *Brnovich* decision. With the *Brnovich* decision, it took away one of the last remaining tools to power the place. VRA's section 2 have effectively

declared open season to suppress American's voting right with impurity.

I don't think we should sit idly by about this. Those who argue that restoring the VRA is a partisan exercise could use a little history lesson. Since its original enactment in 1965, the VRA and its core provisions have been reauthorized repeatedly five times, five times with overwhelmingly Republican and Democratic votes in Congress. Presidents Nixon, Reagan, George W. Bush all signed VRA reauthorization into law touting the profound importance of the landmark law for our democracy. I voted to reauthorize it four times throughout my service in the Senate, and I stood there with both Democrats and Republicans on the floor of the Senate doing that.

In fact, I went back to see how many Republicans voted the same way I did, and how many Democrats. Here's what I found. The most recent voting rights—VRA reauthorization was in 2006. The vote was 98-to-0. I repeat that, 98-to-0. I think it's pretty clear that every Republican, every Democrat on the Senate floor voted for it. You have a lot of Republican Senators still serving today who voted yes.

I just suggest everybody check their facts before arguing that restoring this is a partisan effort; it's not. What is a partisan effort is the Court's decision in *Shelby County* and *Brnovich*. Let's get to work. I authored and long championed the bipartisan John Lewis Voting Rights Advancement Act. I pushed an Act while my right might finally restore the Voting Rights Act. I hope our Republican friends will join us in reauthorizing that and vote as they did before. I'll put my whole statement in record. Mr. Chairman, I appreciate your courtesy in letting me pop in and out. I was in an intelligence matter that I couldn't leave. Thank you.

Chair BLUMENTHAL. Thanks, Senator Leahy. I'm going to introduce the witnesses.

Jose Garza, who joins us remotely, has more than 40 years of experience practicing law, dealing almost exclusively with Federal law. His practice areas focus mainly on governmental entities and Federal litigation, including 1st and 14th Amendment issues, redistricting Federal voting rights, and civil rights. Mr. Garza recently retired as the litigation director for Texas RioGrande Legal Aid, Inc., and is currently voting rights counsel for the Mexican American Legislative Caucus in private practice as the Law Office of Jose Garza. Mr. Garza has represented Latino voters in voting rights litigation, including statewide redistricting cases.

Mr. Ken Cuccinelli. Ken Cuccinelli is a lawyer, conservative politician, and national chairman of the Election Transparency Initiative, a coalition formed in 2021 to restore confidence in elections and eliminate proposed reforms by Democrats. Mr. Cuccinelli served in the Trump administration as the Acting Director of U.S. Citizenship and Immigration Services, and then as the Acting Deputy Secretary for the Department of Homeland Security.

Janai Nelson is associate director-counsel of the NAACP Legal Defense and Education Fund. A renowned scholar of voting rights and election law, Nelson continues to produce cutting-edge scholarship on domestic and competent—comparative election law, race, and democratic theory. She received a BA from New York Univer-

sity and a JD from UCLA School of Law. Upon graduating from law school, Ms. Nelson clerked on the Northern District of Illinois and the eighth circuit.

Russ Nobile is senior attorney with Judicial Watch, a conservative nonpartisan education foundation whose mission is to promote transparency and integrity in government, politics, and law. Prior to joining Judicial Watch, he was a lawyer in private practice who focused on government litigation, regulatory matters, and commercial litigation. He is an active member of the Federalist Society for Law and Public Policy Studies and was appointed to the United States Election Assistance Commission's Board of Advisors.

Professor Richard Hasen is Chancellor's professor of law and public—political science at the University of California, Irvine. He is a nationally recognized expert in election law and campaign finance regulation. He writes as well in the areas of legislation, statutory interpretation, remedies, and torts. He holds a BA degree with the highest honors from UC Berkeley, and JD/MA and PhD in political science from UCLA. After law school, he clerked on the ninth circuit and worked as a civil appellate lawyer in private practice.

We will begin by my swearing in the witnesses as is our custom on the Judiciary Committee and then proceed to opening statements. If you would please rise.

[Witnesses are sworn in.]

Chair BLUMENTHAL. Thank you. Mr. Garza, if we could begin with you, and I know you are testifying remotely as are Ms. Nelson and Mr. Hasen.

STATEMENT OF JOSE GARZA, ATTORNEY, LAW OFFICE OF JOSE GARZA, SAN ANTONIO, TEXAS

Mr. GARZA [continuing]. Blumenthal, Ranking Member Cruz, thank you so much for allowing me to come before the Committee and testify on these important issues.

What I'd like to do this afternoon is focus on the impact of these changes of these laws on my clients. I think it's important to start, for instance, with the impact of *Shelby County* in 2013, with the decision in *Shelby County*. Taking out section 5 of the Voting Rights Act, the voter ID law in Texas became enforceable and was immediately enforced. A lawsuit was filed on behalf of poor minority Texans.

I also represented MALC in that case. In the process of going forward with that case, we secured after testimony and discovery decisions declaring that the statute the way it was written at that time discriminated against Latino, African-American, and elderly voters. The district court enjoined the enforcement of that law. The State of Texas appealed that law to that decision to the fifth circuit and secured a stay.

One of our clients was Margarito Lara. Margarito Lara was an elderly, extremely poor Texan from the Valley of Texas. He testified before the court, and the court cited to his testimony regarding the difficulty that he and his family had financially, extreme poverty, and the burden that it would take for him to secure a new birth certificate to be able to secure the ID that was required by the State. That was part of the evidence that was presented.

In interviews with us, Mr. Lara and the other plaintiffs that we presented to the court, talked about the importance of voting to those individuals, talked about going on election day to the local polling site where everyone knew each other, where he was greeted with people that knew him, and the pride that he took in going to cast his ballot on election day.

There was an election that was scheduled right after the decision came out, and Mr. Lara was scheduled to vote with the injunction that the court had entered. However, with the stay, he was unable to vote in that election. That was the first election in his long life that he ever missed. We did secure eventually a positive decision from the fifth circuit who found that the voter ID law, in fact, violated section 2 of the Voting Rights Act. Unfortunately, before the decision became final, and before a proper remedy could be imposed, Mr. Lara passed away.

Here we have in real life, a gentleman who was a veteran who enjoyed voting as a function of his citizenship more than anything else. He missed the last election of his life because the law that had been found to discriminate against minorities under section 5 and blocked by section 5 was allowed to go forward because of the *Shelby County* decision. Even after the district court determined that it violated section 2 was allowed to go forward again by a stay of that order from the fifth circuit.

The assault on minority votings that I've witnessed in my 40 years of litigation continues today with restrictive voting laws that are being proposed in the Texas legislature limiting the time for voting that has no purpose except to limit the number of people who can vote. Thank you.

[The prepared statement of Mr. Garza appears as a submission for the record.]

Chair BLUMENTHAL. Thanks, Mr. Garza. Mr. Cuccinelli. Could you turn on your microphone, please?

STATEMENT OF KEN CUCCINELLI, NATIONAL CHAIRMAN, ELECTION TRANSPARENCY INITIATIVE, NOKESVILLE, VIRGINIA

Mr. CUCCINELLI. Thank you for inviting me here today. I'm Ken Cuccinelli. I previously served as the attorney general of Virginia, and currently serve as the national chairman of the Election Transparency Initiative where we work every day to help improve the transparency, security, accessibility, and accountability of elections in every State, so every American, regardless of party or race, has confidence in the outcome of every election.

To begin with, as States seek to address the shortcomings in their own election systems, it would help to get beyond the hyperbolic and libelous rhetoric that each and every rule or procedure is not only an onerous restriction but is allegedly knee-jerkingly racist, particularly given that in America today it is easier to vote than ever before.

Imagine an election with no rules. Just a table with a stack of empty ballots. Nobody's watching the table. Nobody's dispensing the ballots. Anyone who comes along can fill out a ballot. Since no one is watching as many as they choose, drop those ballots into a drop box. For good measure, we'll mail a blank ballot to every sin-

gle name listed on our outdated poll book and let anyone return those ballots to unsecured drop boxes.

No one would trust the outcome of that supposedly unrestricted voting process. We need rules, time, place, and manner rules. Only citizens can vote, a reasonable rule. Citizens have to register, and registrars have to keep poll books up to date, a reasonable rule. One ballot per registered voter, a reasonable rule. Enforceable transparencies required so everyone can see the election is clean and secure from start to finish every step of the way, a reasonable rule. Ensure each voter is who they say they are, a reasonable rule.

The Carter-Baker Commission recommended it, and overwhelming majorities of Americans support it. Nevertheless, voter ID has been particularly politicized by the radical left propaganda machine. Yet despite 6 months of media-assisted assaults on the basic commonsense need for voter ID, the American people have been unmoved in their overwhelming support for this basic election integrity measure. It might explain why some very high-profile propounders of the false quote, "voter ID is racist," unquote, propaganda, like Stacey Abrams, have suddenly flip-flopped to get on the right side of the polling.

On the basic mechanics of how elections should be best run, when you take the discussion out of the overcharged political atmosphere of the day, Americans tend to agree on what it takes to run good elections. We've seen that one doesn't need fraud to shake confidence in an election.

Does anyone remember *Bush v. Gore*? In 2000, Florida's election system was held up before the world as a sad joke. Incompetence, election breakdowns, untrustworthy ballots and machines, haphazard and inconsistent rules. Americans' confidence was shaken.

In 2000, the left was screaming its lack of confidence in our elections. Again in 2016. Again in 2018. Highly regarded pollster Scott Rasmussen wrote an article this year, in which he recorded that while 31 percent of Americans lack confidence that America swore in the correct person as President following the election of 2020, 26 percent held the same view after the election of 2016. There is not much overlap between those two groups.

Here in the U.S. Senate, you can learn from Florida. How the people of Florida respond to the shocking revelation of just how poor their election system was in 2000, they set about fixing it. They fixed their laws and procedures, and in many parts of the State, they improved the quality of their personnel. States can and are working to upgrade and improve their election systems. It's important that Washington not step in to dictate its own one-size-fits-all approach that is really more about control of elections by one party than achieving the confidence of the American people in the outcome of our elections.

The first and most important thing the Senate can do is stick with the Voting Rights Act in its current form to fight actual discrimination where it occurs, as noted in *Brnovich*, and not go beyond it to a partisan Federal takeover of our elections. One need only look back at Florida 20 years after *Bush v. Gore*. When much of the country suffered election breakdowns in their States, Florida, the third-largest State and the largest swing State, smoothly tallied its votes with no significant complaints from either side. Citi-

zens can have confidence in their elections but only if the Federal Government doesn't force them to eliminate basic rules of fair and accurate elections, as is proposed with S. 1 and is rumored with the next round of the John Lewis bill. Thank you.

[The prepared statement of Mr. Cuccinelli appears as a submission for the record.]

Chair BLUMENTHAL. Thank you very much. I apologize that I omitted among your qualifications that you are a former attorney general, which is particularly egregious for one who was——

Mr. CUCCINELLI. Yes.

Chair BLUMENTHAL [continuing]. A former attorney general myself. I, well, apologize.

Mr. CUCCINELLI. I appreciate that.

Chair BLUMENTHAL. We have another attorney general, a former attorney general on the dais here.

We're in the middle of votes right now, and I'm going to ask Senator Cornyn to preside while I go vote, and Senator Cruz will be voting as well. In order, they will be Ms. Nelson, Dr. Nobile, and Professor Hasen. We'll be back, I would hope, by the time you're done. I know the testimony is excellent; I've read it. I look forward to the questions. Thank you.

STATEMENT OF JANAI NELSON, ASSOCIATE DIRECTOR-COUNSEL, NAACP LEGAL DEFENSE AND EDUCATION FUND, INC., NEW YORK, NEW YORK

Ms. NELSON. Thank you, Chair Blumenthal and Cornyn, and Committee Members. My name is Janai Nelson. I am the associate director-counsel of the NAACP Legal Defense Fund founded by Thurgood Marshall and leading the fight to defend the voting rights of Black citizens for over 80 years.

Our country's ongoing and sordid history of racial discrimination in voting is threatening the future and functioning of our multiracial, multiethnic democracy. Since the infamous 2013 *Shelby County* decision disabled section 5, voter suppression against Black voters and other marginalized groups has metastasized at alarming rates.

The Court's recent decision in the consolidated *Brnovich* cases threaten section 2, a singular force of national reach that immunizes the right to vote from laws based on discriminatory intent or that produced discriminatory results on account of race. The *Brnovich* decision improperly and illogically departs from the plain text of section 2. It ignores precedent and severely curtails the broad application Congress intended.

As Justice Kagan stated in dissent, the new guideposts proposed by the Court's conservative majority are quote, "mostly made-up factors at odds with section 2 itself and mostly inhabit a law-free zone," end quote. In other words, *Brnovich's* guideposts are unmoored from both text and truth. For example, the majority discounts the expressed text of section 2, which requires an equal opportunity to vote, and instead asks whether a State's entire system of voting is sufficiently open to all, contrary to any prior interpretation of section 2 and to several of the factors that originated in this very body, aptly called the Senate factors, which have guided section 2 litigation for decades.

Another guidepost invites courts to compare a challenged voting restriction to burdens in 1982, nearly 40 years ago, when Congress amended section 2 to correct the Court's previous misreading of the statute in *City of Mobile v. Bolden*. This arbitrary benchmark flouts the text and purpose of section 2, which is to prohibit unequal voting opportunities between present-day racial groups not to impose 1982 as a reference point for evaluating current laws.

Another *Brnovich* guidepost suggests Government actors can disproportionately burden the voting rights of historically disenfranchised racial groups, so long as governments raise a theoretical even if unsubstantiated interest in combating mythical voter fraud. This guidepost threatens to return our Nation to the time when States adopted facially neutral voting laws under the pretense of the purity of the ballot, but with the intent of excluding Black voters from the political process. Not only does this guidepost find no support in the VRA's text, it has no basis in the factual record. Arizona could not point to any voter fraud to justify its challenge laws. A study of the 834 million ballots cast in elections between 2000 and 2014 found only 35 credible allegations of in-person voter fraud.

By contrast, there are voluminous examples of proliferating racial discrimination in voting during the same period. In short, this unscrupulous decision disregards the purpose of section 2, and it erects an indefensible barrier for plaintiffs simply because the majority of the Court fundamentally disagrees with Congress's use of its enforcement powers to legislate broadly to protect the right to vote from racial discrimination. It's nothing short of an attempt to rewrite and weaken section 2 resulting in incalculable costs to our democracy.

Since the disabling of section 5, section 2 has been the primary defense against discriminatory vote denial and abridgment. In 2020 alone, LDF filed five cases under section 2 and has filed two more this year. In the first 5 years following *Shelby*, an unprecedented 61 lawsuits were filed under section 2. It's been 8 years since the Chief Justice expressly invited Congress to update section 5's preclearance formula to reflect modern conditions. *Brnovich* has now issued its own tacit invitation for Congress to act, and it is within Congress's power no less today than it was in 1982 to reject the Supreme Court's latest misreading of section 2 and issue bold legislation to protect the right to vote.

In a week where Texas Senate legislators took the rare measure of leaving a special session to protest a discriminatory voter suppression bill and beseech the Federal Government to intervene, the urgent need for congressional action to update the Voting Rights Act with a clear and unequivocal mandate to protect the right to vote from partisan excess and the corrosive stain of racial discrimination could not be more pronounced.

As we approach the first anniversary of the passing of the late Congressman, civil rights stalwart, and voting rights martyr John Lewis, I urge you to do everything in your power to protect the right to vote, which he described as precious, almost sacred, and the most powerful, nonviolent tool we have in a democracy. Thank you.

[The prepared statement of Ms. Nelson appears as a submission for the record.]

Senator CORNYN [presiding]. Thank you very much. Mr. Nobile. Did I pronounce that correctly?

Mr. NOBILE. Correct, Senator.

Senator CORNYN. Thank you. Please proceed.

STATEMENT OF T. RUSSELL NOBILE,
SENIOR ATTORNEY, JUDICIAL WATCH, INC.,
GULFPORT, MISSISSIPPI

Mr. NOBILE. Thank you, Senator Cornyn. Thank you, Ranking Member Blumenthal—Ranking Member Cruz and Senator Blumenthal, if they were here. My name is Russ Nobile, and I'd like to take a moment, just a little privilege here with the introduction that got left off is that I actually have enforced section 2 and section 5 in hundreds of cases all over the country. Before I went to private practice, I was a trial attorney at the Department of Justice, which is enforcing the two statutes that are actually in question today.

I've already submitted my testimony, my written testimony, and I've previously testified before the House. I'm going to try not to repeat myself, repeat the things that I've previously put in the record. There was one thing I would like to emphasize from my written testimony, and that's the new standing that's going to be given to the attorney general under the proposed John Lewis act. That is going to be a sea change for the Department of Justice. There's virtually no limit on it. I would really urge and caution the Senate to look at that seriously. I have scoured the internet. I read this stuff vigorously. I've yet to find a single explanation from anyone as to why the attorney general after 200 and something years needs to suddenly start weighing in in 14th Amendment cases.

As you began looking in trying to devise how to respond to the *Shelby County* and *Brnovich* cases, I would, you know, stress that both cases present distinct questions and have distinct risk and opportunities there. Some of the discussion sort of blends the two cases together, but they're two distinct cases bringing two distinct opinions.

Over the last 15 years, you've basically seen two trends in election law. You've seen one trend with basically this growing sort of what I now realize is critical race theory interpretation to Voting Rights Act. Then also, you have this, you know, explosion of vote denial cases that you didn't have until approximately 2008. Vote denial cases—well, until recently, I never really thought about how to characterize some of these troubling interpretations of the Voting Rights Act. Now, having seen and read more materials, I understand where they emanate from. In fact, you know, the people I've previously worked with, they—you know, they would promote these theories. Of course, I was there happy to explain why they probably weren't supported by the law.

To be sure, the people that did support these that I worked most closest with, they were sincere and hoping to enforce the law to improve racial relations. That isn't the case for everyone there. I firmly believe that whether you're coming up with these avant-garde interpretations of the Voting Rights Act either in good faith or bad

faith, they both undermine the Voting Rights Act and undermine the ability to enforce civil rights laws in America.

A good example of this mindset was the Department's handling of the 2011 redistricting case in Texas, which I actually was a member of the trial team on. As you may recall, Texas opted to file for preclearance in the district court in Washington, DC, and there was a trial there, over 3 or 4 of the districting plans, depending on which complaints you're looking at. At the outset, the department needed to determine which districts qualify for section 5 protection. As part of that, as part of its public positions the department took, I practices—I was part of the case. I want to be careful to not to disclose any privileges—but as part of the public positions they took, they lumped together Asians, Blacks, and Latinos into a non-white district that was essentially a tripartite coalition district. What do these groups have in common? They voted Democrat. That was the only thing they had in common.

In the primary—in the general elections, in elections in other cases—I mean, in other offices, they did not vote together, but they got lumped together. By doing that, you basically turn a section 5 district into an ideological district. It's not a racial district. It's not a protected district based on people that are being cracked or split or packed. You turn it into an ideological district. Of course—and one of the things that gets lost in that discussion, of course, is that minorities are not fungible homogenized groups that can be lumped together based on the fact that they're white.

Coalition theories only subsumes the individual—civil rights laws often subsume the individuals, but coalition district subsumes the entire groups of races, and you basically mix everyone together just based on who they ideologically support. At some point, the VRA—VRA ceases to protect minorities and just becomes an ideological protection business. In the instance—in that case, it was created to protect a Democratic tripartite coalition district.

The other trend that it's proliferating is the vote denial cases, which *Brnovich* has touched on. I'm running out of time here, so I want to make sure I hit everything. The provisions in Arizona—if the Senate doesn't—if the Committee doesn't—doesn't object, I'd like some extra time to maybe finish my comments on vote denial claims, which the *Brnovich* case addresses. That's a new standard under section 2 that had never—there was no previously standard for vote denial cases until *Brnovich* came about. Of course, *Brnovich* involved regulations that controlled who could handle a ballot and where you voted. Those are regulations that have actually been around for quite some time.

[The prepared statement of Mr. Nobile appears as a submission for the record.]

Senator CORNYN. Thank you very much. I'll start in—since the Chairman and Ranking Member—oh, I'm sorry. We have another. Excuse me, Professor Hasen, I apologize. Since we're doing this in a hybrid fashion, I didn't realize we hadn't gotten to you. Please go ahead.

STATEMENT OF RICHARD L. HASEN, CHANCELLOR'S PROFESSOR OF LAW AND POLITICAL SCIENCE, UNIVERSITY OF CALIFORNIA, IRVINE, IRVINE, CALIFORNIA

Professor HASEN. No problem. Thank you very much. Chair Blumenthal, Ranking Member Cruz, and the Members of the Subcommittee thank you for this opportunity to appear before you today to speak about the Supreme Court's recent decision in *Brnovich v. Democratic National Committee*, a case which eviscerated section 2 of the Voting Rights Act outside the context of redistricting.

The opinion by Justice Samuel Alito for a sixth Justice conservative Majority is unmoored to the text of the statute ignores the relevant history of the Voting Rights Act and toward Congress's intent. Let me begin with some history. A key component of the Act that Congress passed in 1965 called section 5 required States and localities with a history of racial discrimination voting to ask either the U.S. Department of Justice or a three-judge court in Washington, DC for permission to change any voting rule.

This preclearance requirement required these jurisdictions to show that minority voters were not made worse off by the change. Congress intended to prevent States from passing new restrictive rules when court struck down old ones. The idea behind preclearance was to prevent backsliding to worse conditions for voting, a concept that came to be known as non-retrogression.

Section 5 helped a great deal until the Supreme Court's 2013 *Shelby County* decision held it was no longer constitutional because it infringed on an invented State right to equal sovereignty. Although section 5 was effective in stopping new bad voting laws, it did not deal with discriminatory voting laws already on the books. In the years after the passage of the National Voting Rights Act, some litigants tried to use section 2 of the Act to attack restrictive voting rules.

At first, the Supreme Court allowed this, but in the 1980 *City of Mobile v. Bolden* case, the Court held that such challenges require proof of intentional discrimination. Congress disagreed with that interpretation and passed a revised section 2. This revision rejected the intent standard and embraced the disparate impact standard. It was enough to show that the political processes leading to the nomination and election in a State or political subdivision are not equally open to participation of members of the protected class and that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice.

The 1982 amendment created a broad statute in which Congress told courts to look at the totality of the circumstances, including socioeconomic conditions which could make minority voters face extra barriers to voting, as well as the tenuousness of supposed neutral justifications that States could advance for passing restrictive voting rules. Although the Supreme Court interpreted section 2 in redistricting cases, until *Brnovich*, it had never interpreted the issue in vote denial cases in which a State or locality makes it harder for minority voters to register and vote.

Lower courts had read section 2 to set forth a tough standard for overturning the State law but one that could be met in appropriate cases. For example, the fifth circuit, one of the country's most conservative courts, held in an en banc ruling that Texas' very strict voter identification law indeed violated section 2. Then when Texas amended its law in response to the lawsuit to make it less onerous, the fifth circuit held it no longer violated section 2.

Brnovich ignored section 2's comparative focus on less than burdens for minority voters, rather than focus on the totality of the circumstances test written into the law and conduct a local functional inquiry, as explained in the key 1982 Senate report accompanying the passage of the Voting Rights Act amendments. *Brnovich* offered non-binding so-called guideposts for decision. Issuing textualism, *Brnovich* creates an ad hoc test meant less as guideposts and more as roadblocks for voting rights of plaintiffs, giving States defending restrictive voting laws numerous ways to defeat section 2 claims.

One guidepost rolls the clock back to 1982 holding that if a voting practice was not common in the year when Congress amended section 2, it is likely not a violation for the State to eliminate the practice, even if it would just really impact minority voters. Nothing in section 2's text, history, or precedent supports the 1982 benchmark when early voting was scarce and voter registration difficult.

This is, in fact, the opposite of the non-retrogression principle applied in section 5 cases. Non-retrogression principle kept States from making voting worse. *Brnovich* encourages rolling back to the standards set in 1982 as a baseline. The *Brnovich* guideposts naming the strength of the State's interest in voting turns the totality of the circumstances' tenuousness standard on its head.

Under tenuousness, if a State passed the voting law claiming it was necessary to protect voting fraud, that State would actually have to prove that this was the real justification and not a pretext for discrimination. As Justice Kagan explained in her dissent, throughout American history, election officials have asserted anti-fraud interests using—in using voter suppression laws. The *Brnovich* guideposts in practice is exactly the opposite. The Court repeatedly says restrictive voting laws could not be justified by concern over voter fraud, even if a State could not point to any fraud in its State.

The matter is even worse, because in *Brnovich* and elsewhere, the Court has made it hard to win voting suits by relying on racially discriminatory intent of a State legislature in passing voting rules. Congress should reverse the statutory decision through carefully crafted legislation, just as Congress has done in the past, approving voting rights renewals and extensions by broad bipartisan majorities, including by a 98-to-0 vote in the Senate on the 2006 legislation. Legislation will have to consider the scope of Congress's power, especially because the statements in *Brnovich* appears like a threat to find new voting legislation unconstitutional.

Thank you for your time. I look forward to the opportunity to answer questions.

[The prepared statement of Professor Hasen appears as a submission for the record.]

Chair BLUMENTHAL [presiding]. Thank you very much, Professor Hasen.

You know, I want to begin perhaps by asking you about the Chief Justice's role, because I know that you're familiar with the history here. In 1982, John Roberts was a young attorney and special assistant in President Reagan's Department of Justice. It was the same year that Congress was debating amending section 2 to correct a problematic Supreme Court decision, *City of Mobile v. Bolden*. In *City of Mobile*, the Supreme Court held that voters challenging voting restrictions under section 2 must meet the onerous burden of showing that the law was adopted with a discriminatory purpose. It was insufficient, according to the Court's decision, to show that it had discriminatory impact.

In 1982, John Roberts wrote, I think it was, about 25 memos to the attorney general, which are in the public archives, advocating against an effects test, as it was known. Ultimately, though, his plan failed in 1982. The Court agreed with *City of Mobile* and passed a revised section 2. It made clear that plaintiffs could challenge voting restrictions by showing they had discriminatory impact.

Professor Hasen, in what sense is the Court's decision in *Brnovich* a vindication of then attorney, now Chief Justice Roberts' policy preferences which Congress rejected outright in revising section 2 in 1982?

Professor HASEN. Thank you for the question, Senator. I do believe that John Roberts from the 1980s and through his history on the court has shown a kind of hostility toward broad protections for racial and ethnic minorities under the Voting Rights Act. As you said, back in the 1980s, he was the point person for the Reagan administration. It was clear that Congress was going to reauthorize section 5 of the Voting Rights Act. The big fight was over what the language of section 2 of the Voting Rights Act was going to be. There was big pressure to overturn the statutory decision in the *City of Mobile*, which had effectively rendered section 2 meaningless as a standard.

Congress, and especially the Senate in its Senate report, went out of its way to create a functional, localized totality of the circumstances test to try and figure out, are minority voters being deprived of the same opportunity as other voters to participate in the political process? John Roberts fought against that. He said in—and he lost that battle. Congress passed a very broad section 2 in 2009 in the *Northwest Austin* case. Then, in 2013, in the *Shelby County* case, he showed his hostility to broad voting rights protections eventually leading the Court in striking down the preclearance provision.

In *Brnovich*, although he wasn't the author of the decision, he has essentially gotten what he wanted in 1982 just many decades later, which is a return to something like the intent test. Although section 2 is not completely eviscerated, the burdens, the roadblocks that the Court has put in front of minority plaintiffs should not be underestimated.

Chair BLUMENTHAL. Thank you. Mr. Garza, I would like to ask you about the extraordinary events taking place in Texas, but I want to preface it by quoting an exchange that took place in the

Supreme Court hearing on *Brnovich* between Justice Barrett and Michael Carvin, who represented the Arizona Republican Party. Question by Justice Barrett was, quote, "What is the interests of the Arizona RNC in keeping out of precinct ballot rules on the books?" Michael Carvin's answer was, "Because it puts us, the Republican party, at a disadvantage relative to Democrats. Politics is a zero-sum game." Politics is a zero-sum game in that event, and in that case, the pretty obvious acknowledgment was that the goal was in effect suppression of votes.

My question to you is, in Texas, for a second time in the last 3 months, Democrats in the State legislature walked out to prevent passage of a voter suppression bill put forward by a Republican majority. Several of those representatives, as I mentioned earlier, visited me in my office this morning. Their proposed legislation has a number of provision, including limiting early voting hours, ID requirements, and other limits on vote-by-mail. In your experience, how would enacting laws like this one affect the minority communities, communities of color in Texas, people like the clients you've represented throughout your career?

Mr. GARZA. To begin with, the stated purpose for enacting these provisions is to avoid voter fraud. There's been no evidence associated with that. Instead, there has been evidence that—where the measures that are being limited and restricted by these proposals have been enacted by local election officials. Like for instance, opening up the timeframe for people to be able to vote, that that has increased voter turnout especially among populations of color.

It's pretty—there doesn't seem to be a nonpartisan grounding for the purpose behind these provisions. They will have an adverse impact on minority voters that they will make it harder to vote. That seems to be their purpose. That seems to be consistent with the history in Texas where voting is more considered a privilege than a right. I've seen over and over again election processes and election rules being interpreted and used in a manner that adversely impacts voters of color.

Chair BLUMENTHAL. Thank you. I'll turn to the Ranking Member for his questions.

Senator CRUZ. Thank you, Mr. Chairman. Mr. Cuccinelli, good to see you again. Sixty-four percent of voters, including a majority of Black and Hispanic voters, want to strengthen voting safeguards that prevent fraud. That's what your organization is dedicated to doing. If the "Corrupt Politicians Act" were to pass, it would strike down every voter ID law in the country.

Mr. CUCCINELLI. Yes.

Senator CRUZ. Would that protect the right to vote?

Mr. CUCCINELLI. No, it undermines it.

Senator CRUZ. How does it——

Mr. CUCCINELLI. It undermines confidence in the outcome of elections as well, which is also a problem. I mean, this is a lawyers Committee, so I'll use a court analogy. It is not enough that our justice system produce the highest degree of accurate outcomes possible. Just outcomes, it must be understood and viewed to produce those outcomes, so that America can have confidence in its justice system.

The same is true of our election system. It not only needs to work correctly, by which we mean producing an accurate vote count of legally eligible voters, but it also needs to be clearly seen to do so by winners and losers, so that we can have confidence in the outcome of our elections. I rattled off several, 2016, 2018, and now the discussion following 2020 in some places. This is—it's worked on both sides, have had the concern. There have been good reasons for it over the years. I would just say, you know, the reference to fraud—and since it's Texas, the current attorney general of Texas, Senator, respectfully, you know, spoke recently about 500 plus different voter fraud prosecutions in Texas. It isn't that it doesn't exist——

Senator CRUZ. How is that possible? Democrats tell us that voter fraud never occurs in any circumstance anywhere in the universe.

Mr. CUCCINELLI. Of course, it has and the Congress and the House reran an election in 2019. Because of it, it goes both ways. That was Republican operative committing fraud in that race in North Carolina. This is not singular, but protection of voting seems to be sacrificed——

Senator CRUZ. That race was also ballot harvesting, was not it?

Mr. CUCCINELLI. It was, yes. Absentee votes are particularly and have always been known to be particularly vulnerable to fraudulent tactics.

Senator CRUZ. Twenty-nine States prohibit ballot harvesting. The Corrupt Politicians Act that Senate Democrats are pushing would strike down every one of those laws. Would striking down the restrictions on ballot harvesting, would that protect the right to vote?

Mr. CUCCINELLI. Absolutely not. It undermines both the right and the confidence in the outcome of elections. It does double harm.

Senator CRUZ. We have also seen lots of overwrought rhetoric about the Texas election integrity law, about the Georgia election integrity law. Indeed, we had just a few minutes ago House Democrats from the Texas legislature who fled the State of Texas who are not doing their jobs, who are hiding out here in Washington and engaged in a political stunt. What is interesting about the attacks on that legislation is they're strikingly missing specifics. For example, the Texas election integrity law that is being debated right now requires voter ID for mail-in ballots. Does that protect the right to vote?

Mr. CUCCINELLI. Absolutely. I would note that it equalizes the protection of in-person voting as well, something that's happening in other parts of the country with the growth of mail-in voting.

Senator CRUZ. The Texas law that's also being debated prohibits officials from mailing unrequested mail-in ballots, from just taking everyone on the rolls and mailing them all ballots even if they didn't ask for one?

Mr. CUCCINELLI. That's correct.

Senator CRUZ. Is that a provision that protects the right to vote?

Mr. CUCCINELLI. Absolutely. I'll give you a Northeast example, in Connecticut, where their secretary of state mailed out ballots to everyone on the voter rolls, their outdated rolls in the primary and general election, and hundreds of thousands of those 3.6 million, if I remember my numbers correctly, of those ballots were returned with the supposed voter not at that residence. That's an enormous

error rate to just lob a blank opportunities to participate at clearly ineligible residences and voters.

Senator CRUZ. The Texas law that's being debated right now also mandates cameras and live streaming inside central count and early vote ballot board meetings and mandates signature verification proceedings cameras in large counties. Does that protect the right to vote as well?

Mr. CUCCINELLI. Having oversight by citizens definitely protects the right to vote. In my experience as an attorney general, when you provide that kind of transparency in a wide variety of circumstances, not just elections, you can talk about it in the sex offender registries. When they know they're being watched, they behave better. It's an excellent tactic.

Senator CRUZ. Mr. Nobile, we have heard some overwrought rhetoric about the Supreme Court's decision in *Brnovich*, which was a 6-to-3 decision. It wasn't 5-to-4. It was 6-to-3. We have heard Democrats on this Committee suggesting that decision was outrageous. It was far too broad. It was contrary to law. Mr. Nobile, am I correct that the Biden Department of Justice filed a letter with the Supreme Court in *Brnovich* in which the Biden Department of Justice reviewed its prior brief in that case and said, and I quote, "The Department has now concluded that although it does not disagree with the conclusion in that brief, that neither Arizona measure violates section 2's result test"? The Biden DOJ explicitly agreed that Arizona's law prohibiting ballot harvesting did not violate the Voting Rights Act. Is that right?

Mr. NOBILE. That's correct, Senator.

Senator CRUZ. Explain to me how it is that Democrats are saying, "This is a horrible radical right-wing crazy conclusion that upholding the Arizona law can't be done consistent with the Voting Rights Act." Is the Biden Department of Justice some crazy right-wing radical group?

Mr. NOBILE. Probably not, but time will tell.

Senator CRUZ. I feel confident we can predict that they are not, and yet it seems the rhetoric we're getting from our Democratic colleagues does not match reality. Mr. Chairman, I ask unanimous consent that the letter filed by the Biden Department of Justice in the *Brnovich* case explicitly agreeing that the Arizona laws should up—withstand scrutiny under the Voting Rights Act. I ask that that be entered into the record of this hearing.

Chair BLUMENTHAL. Without objection.

[The information appears as a submission for the record.]

Senator CRUZ. Thank you.

Chair BLUMENTHAL. Senator Hirono.

Senator HIRONO. Thank you, Mr. Chairman. For Professor Hasen. In the *Brnovich* opinion, Justice Alito claims to be applying section 2's totality of circumstances requirement. However, he then introduces what he calls "guideposts" that should apply to application of the law, things like the size of the burden imposed by a challenged voting rule and the degree to which a voting rule departs from what it was standard practice when section 2 was amended in 1982. What impact are these guide points going to have on the ability to successfully bring claims under section 2 of the Voting Rights Act?

Professor HASEN. Thank you for that question, Senator. I do believe that these five guideposts are going to make it significantly more difficult for either the Department of Justice or private plaintiffs to win their suits. It's important to understand that these guideposts were, as Justice Kagan said in her dissent, really law-free and not moored at all. Like, if you're trying to figure out what did Congress mean when it passed section 2's revised version 1982, we know exactly what Congress means because Congress in the Senate report—and that very influential Senate report gave a list of I believe it was 13 factors to consider.

Justice Alito didn't draw from those factors, even though all of the lower courts that had considered this question beforehand had done so. He made up these factors out of whole cloth, and they then pretended less as guideposts and more as kinds of roadblocks or defenses that States can put up if they try and pass restrictive voting laws. I think the really key point to understand is that for a Court that says that it's committed to textualism, that it's committed to figuring out what the words meant at the time, we know what these words meant. This was a Court that was not doing that. It was looking to try to roll the clock back and make it significantly harder for voting rights plaintiffs to win in these lawsuits.

Senator HIRONO. These guide points are—excuse me—not found anywhere in the text of section 2?

Professor HASEN. That's correct.

Senator HIRONO. That this is why Justice Kagan has called it extratextual. It sounds as though when the Court does this, and especially Justice Alito, who tends to send out signals like this which results in more losses that are brought by people who they expect when it gets to the Supreme Court will be decided in their favor. When the Court does this, are they not writing law themselves?

Professor HASEN. I think, you know, it's a semantic question as to when courts write law versus interpret law, but what I think we can say is that—the Court did not give a fair interpretation of what section 2 means. In fact, it's even worse. Two Justices, Justice Gorsuch and Thomas, suggested in a concurring opinion that private plaintiffs cannot even bring suit under section 2, which is completely contrary to how we've understood it for four decades. On top of that, Justice Alito made it even harder to bring claims claiming intentional racial discrimination under section 2. It really has made it significantly harder. It's not at all connected to either the text or the history or the precedents and how the lower courts have uniformly understood what section 2 meant before this case.

Senator HIRONO. For you, Professor Hasen and Ms. Nelson, and Mr. Garza, it is very clear that after *Shelby County*, some 13 States immediately passed what we would call voter suppression laws. Over 400 of these kinds of laws are being considered or enacted in various States. What should we expect to see now that the Supreme Court has significantly weakened section 2 of the Voting Rights Act itself? Why is it so important that we enact the John Lewis Voting Rights Advancement Act and the For the People Act in the midst of hundreds of voter suppression bills that are being enacted and considered in some 40 plus States? Professor Hasen? Ms. Nelson? Mr. Garza?

Professor HASEN. I wasn't sure if that was directed to me. I'll just say briefly that the most important thing I thought that Congress could do in terms of the voter rights act was to restore preclearance, which is what the John Lewis Voting Rights Advancement Act does. It's now clear after *Brnovich* that Congress has much more to do in terms of revitalizing section 2 and telling the Court as Congress had to tell the Supreme Court in 1982 that it got section 2 wrong, that it misunderstood what it meant, that imposed too onerous a burden, that it needs to reverse that and impose a standard that is actually one that can be enforced and protect minority plaintiffs across the country.

Senator HIRONO. Do the other two panelists want to weigh in? I would like to hear your views, in spite of the fact that my time is running out. I hope the Chair will allow the other two witnesses to comment.

Ms. NELSON. Yes, I'm happy to respond. Section 2 and section 5 worked in tandem to protect our democracy from the worst threats that emanate from the history of racialized voter suppression in this country. Section 5 was a prophylactic measure that helped to prevent discrimination before it began, and section 2 was the sweeper. Even the discrimination that got through section 5 or that emanated from jurisdictions that were not covered by section 5, were able to be attacked and challenged in court through section 2. As a result of the *Brnovich* case, there's now an even more formidable barrier to those challenges than existed before. We know that section 2 was never a replacement for section 5.

Litigation under section 2 is costly. It's protracted. As Mr. Garza, with whom I've litigated the Texas voter ID case noted, elections come and go and voters lose the ability to cast their fundamental ballots in elections with no recourse when we rely solely on section 2. We have a section 2 that is even more difficult to enforce. We need the For the People Act and the Voting Rights Advancement Act to restore the full robust protections of the Voting Rights Act and to set National standards or basic ways in which Americans can cast their ballots and have faith that they will be counted on an equal basis.

Senator HIRONO. Mr. Garza, would you like to add anything?

Mr. GARZA. I would echo what Professor Hasen and Ms. Nelson indicated. I would also point out——

Senator HIRONO. Your mic.

Mr. GARZA. I'm sorry. I would also point out that there already has been an avalanche of voting changes that are being proposed in response to these modifications of the Voting Rights Act by judicial decree.

Senator HIRONO. Yes.

Mr. GARZA. You know, this last decision by the Supreme Court is just the culmination of a number of cases that have weakened the impact of section 2 and the ability of plaintiffs to bring section 2 cases.

Senator HIRONO. The Chair has left. I'd like to call on Senator Cornyn. Would you like to ask your questions?

Senator CORNYN. Thank you. Let me issue a newsflash. Lawyers disagree about a Supreme Court decision. It happens all the time. Every time the Court issues a decision, lawyers have different opin-

ions about the correctness of the analysis and the outcome. As former Justice Jackson said, the Supreme Court is not right—excuse me, it's not final because it's right. It's right because it's final. Under our system, the Supreme Court's the last word on interpreting our Constitution and laws.

I want to just ask Mr. Cuccinelli and Mr. Nobile a few questions. You know, a lot of discussion about the *Shelby County* case in 2013, but I was here in 2006 when we reauthorized the Voting Rights Act, I think one of the most important pieces of legislation ever passed by the U.S. Congress. The beauty of the Voting Rights Act is it actually worked, as demonstrated in Chief Justice Roberts' opinion. The gap between minority voting participation and white voting majority participation shrunk to almost zero. In fact, in 2020, in Texas, we had 66 percent of registered voters cast their ballot. Historic numbers of Hispanic and African-American voters participated in the election, which leads me to the conclusion that anybody who wanted to cast a ballot, who was legally qualified to do so, had ample opportunity to do so, and they did so in a very robust fashion.

Mr. Cuccinelli, in the *Shelby County* case, Chief Justice Roberts called this preclearance requirement of State voting law changes an extraordinary remedy under the Constitution because as he pointed out, the Constitution itself embraces this notion of equal sovereignty among the States and the Federal Government. Obviously, the Federal Government under the supremacy clause has the authority to pass laws like section 2 of the Voting Rights Act, which remains applicable to the entire country in all the States. Section 5 was very different. It gave the Federal Government the authority to preclear or not changes in State voting laws without frankly offering any real justification, other than they disagreed with it.

This, as I said, was termed an extraordinary remedy. The problem that Cong—the Supreme Court identified was that Congress did not update the 40-year-old formula for which States would be affected by the preclearance requirement. If it had, it would have reflected this—basically, no real difference between minority voting in 2000—in 2015, I guess, it was than between—no difference between Black, Hispanic, and Anglo voting in that year.

My conclusion is the Voting Rights Act worked pretty darn well. In order to gain this system, Congress did not update that formula and used a 40-year-old formula which did not reflect the current reality. It also did not apply uniformly across the States. Different States were—and different counties even were subject to different requirements.

Congress retains the authority to update section 4 to reflect the current reality, but the fact of the matter is, if Congress did update the formula to reflect the current reality, there would be no justification as Chief Justice Roberts' opinion indicates for this extraordinary remedy of preclearance.

Do you agree with my interpretation? Would you like to correct it or clarify it?

Mr. CUCCINELLI. No, I do agree, and I'd like to embellish it a little bit. I mean, the Chairman used a descriptive example from the South in the Voting Rights—I'm sorry, civil rights era that cul-

minated in the Voting Rights Act. It simply doesn't exist in America any longer. Chief Justice Roberts said that explicitly in the *Shelby County* case, the Voting Rights Act works. The preclearance, I'm going to use the past tense, worked.

The tests, like literacy tests, that existed, the hurdles, poll taxes, put in place in some of the States that were covered by preclearance were wiped out, were eliminated. The—and barriers to registration and participation were wiped out, were eliminated. Did it take time for Black citizens in those States to register up to the level of the rest of the country? Yes. That happened decades ago. Including before 2006, by the way.

We've had over 60 percent voter participation in every Presidential election since 2004. I think you have to go back decades before 2004 to find that same accomplishment.

It worked. That was recognized in *Shelby County*. One of the reasons *Shelby County* and *Brnovich* are correct is simply because the Supreme Court was dealing with facts and not hysteria, which we're hearing an awful lot of, in condemning these cases.

Senator CORNYN. If *Shelby County* didn't change the racial participation of Hispanics and minorities—and obviously since 2013, there hasn't been a preclearance requirement even for the States that were previously affected, it seems to me that this is no longer about race or voter suppression, but more about political power.

Senator Cruz did a good job of explaining this one, and its various attempts to hijack the State election laws. I think one thing he left out is the fact that taxpayers would be required to finance elections of candidates that they disagree with on the policies, I think on a 6-to–1 basis. For every dollar a candidate raises, the Federal taxpayer will be required to pay into that election campaign $6 and finance the election of a candidate they ardently disagree with.

Let me ask just one last question about these so-called voter suppression laws. In Texas, Mr. Nobile, we have 17 days of early in-person voting. In Connecticut, the Chairman's State, they have zero days of early in-person voting. Do you believe Connecticut is suppressing minority voting by having zero days of early voting as opposed to the 17 days that are available in Texas or is there some other explanation?

Mr. NOBILE. Let me put it broadly. If they were redoing the coverage formula for section 5, New England would be patient zero. Massachusetts, Connecticut, all the data shows that this racial disparities and turnout and registration is worse there than almost anywhere else in the country.

Senator CRUZ [presiding]. Thank you, Mr. Nobile. Senator Klobuchar is, as I understand it, next remotely.

Senator KLOBUCHAR. Very good. Thank you very much. Thank you to all of you for being here. My State has the highest voter turnout in the country persistently, and we have elected Democratic Governors, Republican Governors, and Jesse Ventura.

I guess one of the things I've learned from that is what's most important is that people vote and they feel like they are part of the democracy. What really concerns me about these efforts which are blatant attempts to limit the freedom to vote is they're literally messing around with the foundation of our country.

I guess I would start with you, Mr. Garza, because I met today with a number of the Texas legislators along with Senator Warnock and Senator Merkley because Senator Merkley and I lead the For the People bill. Which provisions of the legislation that is now being considered in Texas are you most concerned with?

Mr. GARZA. It's a bad bill all the way around. There are prohibitions limiting the timeframe for when people can vote. I think that's concerning. There are—you know, there was a misstatement made about how local election—elective officials are prohibited from sending ballots to voters. Actually, they're prohibited from sending applications or mail-in ballots.

There are—those actions are criminalized. That there are efforts that intimidate local election officials from trying to help people vote, assist people in voting. I think those are——

Senator KLOBUCHAR. Is it also the fact, that if you have more than three people that you're taking to the polls, you have to sign some kind of statement or affidavit?

Mr. GARZA. Yes. There are restrictions on assisting voters to the polls. Assisting voters at the polls. So, those——

Senator KLOBUCHAR. Also defining your disability? Is that—there's something in there on that?

Mr. GARZA. Yes. Additional affidavits that need to be filed by voters. I think all of the things that are included in the bill are things that have been tested and have an increased voter participation. There is no evidence of voter fraud regarding these matters. There are—there is evidence of increased voter participation. Those are the things that are being limited.

Senator KLOBUCHAR. All right. Thank you. Ms. Nelson, just along these lines that so we've identified a lot of these issues. Georgia has passed a law that is kind of unbelievable in some of its provisions. How does the For the People Act—we know that John Lewis Act will help in one important way with identifying those policies and States that engage in discriminatory conduct in going forward which is one of the issues that would be forward-looking. They'd have to come before the Justice Department to—for approval, but—the For the People Act is actually firmly grounded in the Constitution. It's a provision in the Constitution that has never been doubted, that says the Congress can make and alter provisions governing Federal elections. That's one of the things that interest me so much about the bill.

Could you talk about some of the important protections in this. How it would just simply create some basic national standards for voting instead of this mess, including how we count the ballots after with some states. Including some blue States waiting and not even starting counting them until after the election's over and then everyone is kept in suspense for weeks. Anyway, go ahead.

Ms. NELSON. Sure. The For the People Act is a very comprehensive and extensive piece of legislation that equalizes voting across all of the States. Senator Cornyn made the point for me in many ways by pointing out that there's early voting in Texas and none in Connecticut.

I think we've learned over the course of several decades that expanding opportunities for eligible Americans to vote only enhances our democracy. It only invites more people to exercise a funda-

mental constitutional right. It's something that we should all be encouraging.

The For the People Act does that by creating a baseline of two weeks of early voting across the country. It also creates a program of automatic voter registration, so that only eligible Americans will be automatically registered. It takes the onus off of everyday American staff to have to register themselves. Unlike what Senator Cruz said earlier, it doesn't allow people who are not eligible to vote to be registered. It limits it only to those eligible Americans, which is a benefit for all Americans.

It also includes same-day registration, as well as online registration, and includes a number of other provisions including welcoming returning citizens back into our electorate after they have served their time.

These are all democracy expanding provisions that, we now know, 67 percent of voters support. Unlike much of the rhetoric we've heard today, the principles of the For the People Act are overwhelmingly supported by the American electorate. That includes 56 percent of Republican voters, 68 percent of Independent voters, and 77 percent of Democratic voters.

This shows that this law is not a partisan issue. It's not a partisan—it's not partisan propaganda. It is an American issue, and it strengthens our democracy across the board.

Senator KLOBUCHAR. I would note your point about people voting after they've completed their sentences or prison sentences. Florida, while electing Republican statewide, actually voted overwhelmingly, I think it was 65 percent, to allow people who had completed their prison sentences to vote.

I think one of the points we want to make here, and that I made as Chair of the Rules Committee, is that—that you have just done. This—there is significant bipartisan support as we saw during the pandemic for people voting safely in the way that they would prefer.

That's the core of this bill. That's why I know we will eventually be successful. Thank you very much, all of you.

Senator CRUZ. Thank you, Senator Klobuchar. Senator Lee.

Senator LEE. Mr. Cuccinelli, you served as the Attorney General of the State of Virginia both before the *Shelby* case and after the *Shelby* case. What can you tell us about your experience with the section 5 preclearance process prior to the *Shelby* decision, and then your experience complying with section 2 in Virginia after the *Shelby* decision was rendered?

Mr. CUCCINELLI. Of course, there's always the sort of, at least, theoretically unreconcilable dichotomy where section 2 legitimately demands that race not be taken into account in establishing voting laws and procedures. Then section 5 which demands that preclearance States take race into account in, for instance, redistricting and in particular.

After *Shelby County*, a couple of the small number of DOJ section 2 cases caught preclearance States, Texas was one, in a situation where they—under *Shelby County*, they weren't supposed to have taken race into account yet——

Senator LEE. They had to.

Mr. CUCCINELLI. It was explicitly done. It was a catch–22 at that time. That's gone away for the next set of redistricting, of course. The burdens of doing this, of complying with preclearance for those who haven't participated in it, are pretty extraordinary with over 10,000 election districts in this country.

If you move the polling place that you vote at—and I don't mean you, you Senator—if your State moves your polling place here in Virginia, where I was, from the firehouse to the schoolhouse, you had to get Federal permission.

If you moved it from the cafeteria to the gym, you had to get Federal permission.

Senator LEE. Why?

Mr. CUCCINELLI. We have about——

Senator LEE. Why did that require preclearance?

Mr. CUCCINELLI. Everything required preclearance. Every—there is literally no detail of your election system too small to be demanded to be precleared by the Federal Government. Of course, it's partially a deterrent to making any changes.

Evolution of State systems under that circumstance is just slower than it would otherwise be. That's just speaking to a good government perspective of running us—running the State well.

Senator LEE. Okay. As I read H.R. 4, I read it to require preclearance for States based on mere allegations.

Mr. CUCCINELLI. Yes.

Senator LEE. Not proof of voter discrimination.

Mr. CUCCINELLI. Yes.

Senator LEE. If that's the case, then potentially every jurisdiction, every voting jurisdiction in America could be subject to preclearance. Is that right?

Mr. CUCCINELLI. That seems to be the point, especially with a 25-year look back.

Senator LEE. Wouldn't that dramatically exacerbate the problems that you face as attorney general *pre-Shelby*?

Mr. CUCCINELLI. They'd exist for every State pretty quickly because——

Senator LEE. For every State?

Mr. CUCCINELLI. All it takes is allegations, as you note, by the Attorney General or settlements. The easy way to get a State in to preclearance under the circumstances in—under H.R. 4 is to sue small election jurisdictions which can't afford to litigate, settle in ways that aren't disadvantageous to them, and that settlement counts as one of the strikes against that State and that locality for bringing it into preclearance with 15 of those over 25 years, which is easy enough to file that many suits, then that State is in preclearance. It had nothing to do, nothing to do with disparities and discrimination based on race or any other reason.

Senator LEE. Mr. Nobile, is there any data that suggests combating State-enforced voter discrimination cannot be accomplished on a case-by-case basis under section 2 of the Voting Rights Act?

Mr. NOBILE. No. I mean, I think that's pretty much what the Voting Rights Act suggests, right? I mean, you had section 5, and then when section 5 went away when it was initially enacted, you always had the permanent provision of section 2.

Senator LEE. Was your experience in the Voting Rights Section of the Department of Justice consistent with what Mr. Cuccinelli described *pre-Shelby* and *post-Shelby*?

Mr. NOBILE. Yes, it gets very granular. I mean, you know, the Supreme Court has intervened a few times and told the section how far that goes. In one of the cases, in Alabama, the name is escaping me at this point, they sued over—or an advocacy group sued over, you know, budgetary changes. It gets that intimate into what a jurisdiction does.

That—that was set aside as not a section 5 change, but that should give you some insight into how granular they'll get.

Senator LEE. Now that we've accepted the fact that potentially every jurisdiction in America could be subject to preclearance.

Mr. NOBILE. I would that H.R. 4 has two forms of preclearance, right. They've got the national version and then the traditional version, and that gets sometimes mixed up. It's got national coverage for election integrity measures, and a new triggering mechanisms for traditional section 5. Everyone's getting covered regardless. Then some people may be covered by both.

Senator LEE. They might be covered in both respects. What—in your opinion what—what are the section 2 violations that are so rampant that are so pervasive as to warrant preclearance? Is there anything analogous to the conditions we saw with the initial enactment of the Voting Rights Act and the application of section 5? Anything like that?

Mr. NOBILE. Not currently. I mean, of course, as Mr. Cuccinelli mentioned, I mean, settlements are very thin mechanism for triggering mechanism. I've represented small jurisdictions and represented the State of Mississippi and some Voting Rights Act cases. I mean, those things can cost $100,000 to $1 million. There's all sorts of non-substantive basis for settling these cases that don't involve a consent decree, that don't involve a prima facie showing in Federal court.

Senator LEE. Are Department of Justice attorneys—or did you see Department of Justice attorneys communicate with outside groups when making decisions of whether to bring any of these cases?

Mr. NOBILE. Yes, I mean, they would always go solicit information or insight or views from advocacy groups in section 5. I mean, you know, some of the other stuff that the—you know, the influences, honestly, they know how to do it. I mean, they've been doing it for a while, and they have personal relationships with all these people. They will pick up the phone and call them. Then, you know, there'll be expedited for all your processing and things like that. I think a lot of it was spelled out in the OIG Report from 2013, of which I was there, and I can corroborate virtually everything in it.

Senator LEE. In your view, is the Voting Rights Section sufficiently nonpartisan that you could say that they could make these decisions without any appearance or reality of being outcome-driven or politically motivated?

Mr. NOBILE. I mean, it's not nonpartisan. I mean, it's just—as a practical matter, it's just not. Can they set that aside? There are some people in that Section that are pathologically incapable of setting aside their views.

Senator LEE. Okay.

Chair BLUMENTHAL [presiding]. Senator Lee, we're going to have a second round.

Senator LEE. Great. Thank you.

Chair BLUMENTHAL. I just want to enable Senator Padilla to go, and then I'll call you back with the Ranking Member's permission. Senator Padilla.

Senator PADILLA. Thank you, Mr. Chair. I know our time is limited and the hours long but wanted to, at minimum, get in one question directed at Professor Hasen. Professor, Justice Alito, like many of my Republican colleagues have—like many of my Republican colleagues has held himself out to be a champion of textualist judicial philosophy.

The basic premise of the philosophy is that judges should start with the words of the statute as they would be understood at the time they were written. If they are clear, go no further. Any additional analysis would step beyond the role of a judge, and it's considered quote, "inappropriate and judicial activism."

In writing the *Brnovich*, majority opinion, Justice Alito abandoned textualism altogether to reach a conclusion that is entirely divorced from the actual text of the Voting Rights Act.

His analysis laid bare that for the conservative majority of the Supreme Court textualism only applies where it is convenient to reaching the desired case outcome. Professor, can you explain how Justice Alito's opinion in *Brnovich* effectively ignores the text of section 202 of the Voting Rights Act?

Professor HASEN. Thank you, Senator. The first thing I would say is that Justice Kagan's opinion in the dissent is, I think, a much more faithful textualist interpretation of what the words of the act actually say in the context in which they were written.

Justice Alito has not been as strong of a textualist consistently, as some of the other conservative Justices. When you think of Justices, Gorsuch and Thomas especially, they signed on to this opinion. This was the 6-to-3 opinion. The 6 conservative Justices, including the 3 Justices appointed by President Trump, have been strong supporters of textualism.

Justice Kavanaugh wrote an article in the Harvard Law Review embracing textualism, and yet this opinion abandons textualism. They came up with these guideposts that have absolutely no connection to the text of the statute or to—even to precedent which is something that textualist will often look to or to just the earlier versions of section 2.

Again, this part of the Act was rewritten in 1982 because the Supreme Court got it wrong in 1980 in the *City of Mobile v. Bolden* case when the Court said that section 2 did not cover discriminatory results.

Congress clearly put it back in and any honest textualist would understand that this was an effects test that would ask, as Justice Kagan explains in her dissent—the first question is, are minority voters treated worse? If you can say that they're treated worse in any voting law, that's what this should go for—what should be targeted, that.

What Justice Alito did was smoke and mirrors to just make it easier for States to defeat section 2 claims in this area.

Senator PADILLA. Okay. I have one quick question for all five of the witnesses. It's a simple yes or no question that I ask that you each respect my question with the simple yes or no response.

The preface of the question is this, when I was in high school government class, I remember our teacher teaching us that our democracy works best when as many eligible people participate. Did my high school teacher get it right? Yes or no? Professor Hasen?

Professor HASEN. Yes.

Senator PADILLA. Ms. Nelson.

Ms. NELSON. Yes.

Senator PADILLA. Mr. Garza.

Mr. GARZA. Yes.

Senator PADILLA. Mr. Cuccinelli.

Mr. CUCCINELLI. Yes, and with confidence and transparency.

Senator PADILLA. Mr. Nobile.

Mr. NOBILE. Yes.

Senator PADILLA. Thank you. I mean, it seems like a simple concept. I ask it, for the record, because I've heard far too often, not just from several of my Republican colleagues this year, but for many years from Republican leaders including election officials across the country, this supposed philosophy of all we want to do is make it easier to vote, but harder to cheat.

The data suggests we've gotten the harder to cheat down pretty good. Every study, every investigation, has not only documented but quantified voter fraud in America is exceedingly, exceedingly rare.

What my colleagues seem to have forgotten about is the first part of their mantra, the easier to vote piece. I know this is not a hearing on the For the People Act, but as the former secretary of state of California having not just champion but successfully implemented a lot of the measures called for in the For the People Act policies like automatic voter registration, same-day voter registration, no-excuse vote by mail, the ability of voters to choose a voting location in their county most convenient to them if that is their choice, same-day registration, and more.

We know that it—it's not just good for the voter in terms of improving ballot access, it actually—these policies taken together also help improve election security and protect the integrity of our election.

Yes, election integrity is a concern and a responsibility. If we all agreed with my high school government teacher, and all of you said yes, government also has a role and a responsibility in facilitating that participation of all eligible voters. That what should be driving the actions of Congress and statehouses today. Thank you, Mr. Chair.

Chair BLUMENTHAL. Thanks, Senator Padilla. Senator Lee, I interrupted you. If the Ranking Member has no objection, I'll let you continue.

Senator LEE. I'm—I'm stunned with the suggestion that was made by one of our colleagues moments ago with the involvement of one of our witnesses to the effect that Justice Alito used textualism and originalism as a pretext in order to uphold reprehensible voting practices. This simply is not true.

Not only is it not true, but I believe that statement was made with reckless disregard for its truthfulness. If you're going to come in here and assail one of the finest jurists that's ever served on the highest Court of this country, you better be prepared for it.

Look, you might disagree with the decision as far as a policy outcome. You might even disagree with the way he read it. I don't. He got it right. Don't come in here and say that because you disagree with it you think he's using it as a veneer, as a pretext to getting away with something reprehensible. That's not fair. That's not accurate. You cheapen this entire process when you do that.

I hope that those who made that suggestion will apologize and retract what they said because it is wrong. Not just factually incorrect, but it's morally wrong. Don't do that. That's not what happened. You know that's not what happened.

Look, we've been told repeatedly, over and over again, that the last election was the biggest election turnout in history. We've been—the most—the first electorate in history. Yet, feverish cries of discrimination in voting have been relentless and are reaching a feverish pitch, so much so that they're causing people to depart not only from the facts and the law but from basic standards of human decency in light of overwhelming proof that minorities are voting, and that they're voting in record numbers.

I'm completely baffled by the hysteria of the left over the state of voting in this country. I see no evidence demanding a Federal takeover of elections nor do I see any authority to do what they are doing.

The Constitution whether you like it or not is something that we've sworn an oath to uphold and protect and defend. We can't just treat as if it were some inconvenient truth. It is not. It is the law. It doesn't empower us to take over elections.

Likewise, the vast majority of Americans support commonsense reforms to election laws. Requiring voter identification, banning ballot harvesting, securing drop boxes, and yet the left has lost its mind because the Supreme Court has held the commonsense reforms in Arizona do not violate the Voting Rights Act. They don't. The text makes that very clear.

Certainly, it cannot be that any voting requirements are unacceptable and yet that's exactly what we've heard ad nauseam from the left since day one of this Congress. It's to the point that an activist DOJ has taken to harassing the States by bringing frivolous cases against them for trying to do what Americans have asked them to do. To make it easier to vote and harder to cheat.

If we're told that we cannot make even these basic reforms to ensure the integrity of our elections, none of our votes mean anything and that we're all disenfranchised.

I want every legitimate vote to count. That cannot happen if we refuse to allow States to make these commonsense non-discriminatory reforms to secure elections. That is make no mistake what this is about.

Look, you can't step in and try to impose what really would amount to de facto nationwide preclearance standard. Expect that that's going to pass constitutional muster. Much as people were trying to characterize this as if we were living in the immediate post or pre—post Jim Crow era, that is not where we are.

The very same practices that prompted preclearance, and the need for preclearance in the 1960s are not there. Section 2 is still in place for—when actual instances of discrimination take place. Those are our adequate remedies. I have yet to hear a single explanation from any advocate of H.R. 4 as to why those are inadequate.

I have yet to see a single shred of evidence indicating that there are so many section 2 cases mounting and going unaddressed and unresolved as to warrant de facto nationwide preclearance. We can't let this happen. It's not constitutional. The arguments that we've just heard about Justice Alito are patently wrong and unfair. Thank you.

Chair BLUMENTHAL. Thank you, Senator. We have a big difference of opinion. I just want to go back to what the Supreme Court said about preclearance. Not that it was unconstitutional, in striking it down in *Shelby County*, but that it wasn't needed anymore.

In fact, Chief Justice Roberts' majority opinion in *Shelby County* acknowledged that preclearance had worked. Senator Cornyn, I think here, just a little while ago, said preclearance worked. None of them said it was unconstitutional.

Senator LEE. To be clear, that's not what I'm saying. I'm not saying all preclearance is and always was unconstitutional. I'm saying H.R. 4 is wildly unprecedented.

Chair BLUMENTHAL. Going back to the Supreme Court's opinion, Justice Roberts said, quote, "Conditions had changed," end quote. In the South, there was no longer any need for it. Frankly, as late Justice Ginsburg said in dissent, quote, "Throwing out preclearance when it has worked and is continuing to work to stop discriminatory changes, is like throwing away your umbrella in a rainstorm because you are not getting wet," unquote.

We are getting wet. In fact, in the wake of *Shelby County*, numerous States rushed to pass restrictive laws. Laws that restricted access to the ballot that had previously been blocked through the preclearance process including stricter voter ID laws, restrictions on early and absentee voting, and elimination of voter registration opportunities.

I'd like to ask Ms. Nelson, because you've litigated around the country, what has been your experience in the wake of the *Shelby County* decision? What have you seen?

Ms. NELSON. In the wake of the *Shelby County* decision, we've seen a rise in voter suppression that is absolutely stunning. That is just an assault on the progress that the Voting Rights Act made over decades.

Section 5 took away the basic filter in jurisdictions with a known history of racial discrimination to ensure that those jurisdictions would not continue to discriminate on the basis of race.

We clearly do not agree with the outcome of the *Shelby County* decision. It must be reiterated that the *Shelby County* decision was very clear on the point that section 5 is constitutional. It struck down section 4, which is the trigger for section 5. Chief Justice Roberts invited Congress to update that formula to ensure that it reflected modern conditions.

That is exactly what the Voting Rights Advancement Act does. It updates the voting rights act with modern conditions and ques-

tions about jurisdictions and findings, not allegations, actual findings of discrimination, and concessions of discrimination to ensure that only those jurisdictions that continue to discriminate on the basis of race are subject to Federal preclearance.

It is constitutional. It is within Congress's enforcement powers under the 14th and 15th Amendments to require jurisdictions that engage in racial discrimination to submit voting changes for preclearance.

It is simply an evaluation, a question, of whether those new changes will have a discriminatory impact. It's not punitive. It is not a finding in and of itself. It is a way for the Federal Government to ensure that our elections are free of racial discrimination.

In the absence of section 5, we've seen countless violations of the Voting Rights Act the same day that the *Shelby* decision came down. The State of Alabama, the State of Texas resurrected voting laws that had been found to be discriminatory. Under section 5, they resurrected them and began the process of implementing them.

Lo and behold, they had the discriminatory impact that was predicted. We've seen copycat legislations following the end of section 5. We've been litigating furiously to try to beat those discriminatory laws back. Litigation, as I have mentioned before, is not a remedy, because elections occur and elected officials are installed, and those—those decisions that were made in a context of racial discrimination cannot be undone.

That's why it is imperative that this body move forward at the invitation of Chief Justice Roberts, and now at the invitation of the Court based on its attempt to weaken section 2 in *Brnovich* that it move forward with clear legislation, that is a mandate to protect the right to vote, both prophylactically and by strengthening section 2.

Chair BLUMENTHAL. Thank you, I think you've made really very clearly the point that I think is paramount here, which is that our goal is to restore a preclearance process under section 5, to restore section 2 to what it was before it was eviscerated by *Brnovich*, and the John Lewis Voting Rights Advancement Act, which would accomplish those goals by amending the Voting Rights Act of 1965, is supported by a broad array of business, community leaders, and political officials.

To that end, I want to put into the record a letter that has been signed by 160 such companies. Major companies in the country urging passage of the John Lewis Voting Rights Advancement Act. That concludes my questions. Do you have any questions, Senator Cruz?

[The information appears as a submission for the record.]

Senator CRUZ. Thank you, Mr. Chairman. Just a moment ago, the Chairman said that the *Brnovich* decision eviscerated section 2 of the Voting Rights Act. Mr. Nobile, I want to confirm what we talked about earlier. Is it correct that the Biden Justice Department explicitly agreed that the Arizona provisions being challenged were consistent with and satisfied the Voting Rights Act?

Mr. NOBILE. It is correct. If I can add one point to this.

Senator CRUZ. Sure.

Mr. NOBILE. There's been a lot of talk of the five circumstances, of the five lodestar, that Justice Alito put in his section 2 opinion in *Brnovich*. Those things are the extent of any burden, the departure from a historical benchmark, the significant—significance of any disparity, the opportunities to register—the other opportunities to register and vote, and the significance of the State entrance.

That is section 2101. None of that is anything new. Everybody that brings a section 2 case, you look at the size of disparity, you look at the history, you look at the burden, you look at the other opportunities. Every section 2 case, you do that.

In a dilution case, it doesn't matter because it's a completely different metric. You got *Gingles*, you got Senate factors. This argument that Alito deviated from the text is sort of unfounded.

Senator CRUZ. Mr. Cuccinelli, can you tell this Committee about actual Jim Crow laws? How do they operate?

Mr. CUCCINELLI. Sure. I have to say when I hear people like the President of the United States throw around the notion of cleaning up our elections by saying it's a new Jim Crow, it's offensive to the real thing. It's like people claiming racism as an excuse, when there isn't racism, to accomplish other goals also diminishes occurrences of actual racism.

Look, I'm a Virginian. I brought parts of the 1902 Virginia Constitution with me. Article 2, when I'd urge the Committee to accept this as part of the record of real Jim Crow laws.

Article 2 is about the franchise, poll taxes, property requirements, literacy requirements, end-runs around literacy requirements so whites could get access to the vote, where Blacks would not. For instance, it allows those who were active in war for either the United States or Confederate States to be registered to vote regardless of all the other tests or a son of such person. That's called a grandfather clause. Other places they do the grandfather.

Let me read to you the spirit of this Constitution in article 9. This is section 140. I'm going to read the whole thing. "White and colored children shall not be taught in the same school." That's what's going on in the 1902 Virginia Constitution. That's Jim Crow laws.

I brought with me a six-page test from 19—I want to say 1958 in Georgia. You had to pass this test to register to vote. I was the head of USCIS. We gave citizenship tests for people to become new citizens. They were a cakewalk next to this. I wonder if anybody on this Committee could name every judge in the judicial circuit you live in. I can't. I'm—was the attorney general.

That's one of the questions on here. I'd submit this for your record as well. This is a real Jim Crow impediment to people registering to vote. It's both a literacy bar and these kinds of tests.

The Virginia Constitution includes tests like that. You can find this in California, Connecticut, Delaware. These are real Jim Crow laws.

Senator CRUZ. Mr. Cuccinelli, which party wrote the Jim Crow laws?

Mr. CUCCINELLI. Almost universally written by the Democrat party and one-party control, certainly in Virginia and across the South.

Senator CRUZ. Which party enforce the Jim Crow laws?

Mr. CUCCINELLI. The Democrat party, universally.

Senator CRUZ. Which party's elected officials benefited from the Jim Crow laws?

Mr. CUCCINELLI. The one-party control was maintained for decades and decades by the Democrat party.

Senator CRUZ. Jim Crow laws were designed to keep politicians from which party in office?

Mr. CUCCINELLI. The Democrat party.

Senator CRUZ. Today, Democrats are at it again. Among other things, they are advocating, subjecting every State election law to be able to be vetoed by an unelected bureaucrat at the Department of Justice.

If an unelected bureaucrat at the Department of Justice can veto, say, a voter ID law that is adopted by the State legislature that is elected by the voters, is that respecting democracy? Is that protecting the right to vote?

Mr. CUCCINELLI. No, it's undermining democracy.

Senator CRUZ. How is it undermining democracy?

Mr. CUCCINELLI. When the will of the people, as expressed through their elected representatives, make policy choices in their sovereign State and a Federal bureaucrat rolls in with the power to undo that entire process, you are vetoing by an unelected person, the results and the will of the elected representatives in that State. That undermines democracy, and it makes elections less useful to the people.

Senator CRUZ. It's impossible to miss why it is that Democrats want to give unelected bureaucrats in the Department of Justice veto power over every State legislature in America. Because those unelected bureaucrats are not just principled nonpartisan paragons of virtue, instead, they are hard, radical leftist activists.

In 2013, the Department of Justice Inspector General issued a scathing report detailing the politicization of the Civil Rights Division. The report criticized the Voting Section of that Division for ignoring the resumes of qualified attorneys and hiring a majority of lawyers from only five left-wing advocacy organizations including the ACLU, La Raza, and the NAACP.

Moreover, a recent hearing in the House, a former lawyer in that Division, Maureen Riordan testified just how political that Division was. She said she was shocked at how political the conduct of the lawyers were. Some of the dishonesty that Ms. Riordan testified to—and she said even after a court sanction, the DOJ Voting Section with $594,000 for collusive misconduct with ACLU organizations, Ms. Riordan was urged to continue to strategize with the ACLU and other leftist organizations.

Mr. Nobile, you worked in this Section? Is that consistent with your experience?

Mr. NOBILE. That is.

Senator CRUZ. Can you describe the politicization that you saw when you worked in the Department of Justice?

Mr. NOBILE. Mind you I left there in 2012, so—or—yes, 2012, but I was there during the time it was relevant to the OIG report. When the report came out it was retrospective. Virtually everything in that report, I can corroborate and saw.

I mean, I know Maureen. I haven't talked to her until recently when she's gone out into private practice. I respect Maureen and everything she says. I watched her testimony, and I believe everything Maureen said.

Yes, I mean, the staff has a way of sorting out people's political views. I mean, I don't know the people that have been hired since I left. I have a hard time imagining that anything has been able to change. It's the culture of a locker room, so to speak. It's tough to change that. It's pretty consistent with the OIG report.

Senator CRUZ. Today's hard-left is opposed to voter ID laws. If Democrats succeeded in giving unelected bureaucrats at DOJ veto power over voter ID laws, would any State in the country be able to pass a voter ID law?

Mr. CUCCINELLI. No.

Senator CRUZ. All right, final question Mr. Cuccinelli. Senator Klobuchar and one of the Democratic witnesses said that if the "Corrupt Politicians Act" were passed into law, that no illegal aliens would be registered to vote. Is that remotely credible? If not, why?

Mr. CUCCINELLI. No, it's not. The terms of the bill, the draft bill, clearly not only would register millions of non-citizens, including illegal aliens, because they get into State databases, and that's not nefarious. States interact with the people that live in their States.

Senator CRUZ. Like illegal aliens have driver's licenses in a lot of places.

Mr. CUCCINELLI. They do, in many States.

Senator CRUZ. Millions of illegal aliens have driver's licenses?

Mr. CUCCINELLI. Absolutely.

Senator CRUZ. They'd all be automatically registered or most of them would be automatically registered?

Mr. CUCCINELLI. Yes, and the bill doesn't say citizens. It says individuals in those databases. I would further note, Senator, that there are other provisions. One, it criminalizes—and the Chairman expressed his worry about using criminal statutes to intimidate. It intimidate State and local officials with new Federal criminal penalties if they ask questions vaguely worded. If they ask questions without filtering who should be——

Senator CRUZ. Does it immunize State officials who register illegal aliens from liability for registering illegal aliens?

Mr. CUCCINELLI. Not only that. It immunizes the illegal aliens from voting. There's no penalties. It removes penalties for anyone registered to vote this way from actually voting in elections, and thereby, denying other Americans the quality of the vote that I've heard on a bipartisan basis here today everyone values.

Senator CRUZ. Does allowing millions of illegal aliens to vote—does that protect the right to vote of American citizens?

Mr. CUCCINELLI. It utterly undermines it.

Senator CRUZ. Why?

Mr. CUCCINELLI. It may—it cancels out millions of American votes with—on an unpredictable basis. You don't know how many this is going to affect in your State. I don't know in my State. I do know that it will be an enormous number. I can think, heck, I've won a recount race for my State legislature.

I remember going all the way back to the first State race I voted in. Doug Wilder won by only 6,000 votes. We've had Bob McDonnell won in a close race. Mark Herring, the current attorney general of Virginia, won by a few 100.

The difference that would make in turning elections is enormous, and because it is unknowable, it would—in terms of the numbers, it would gut the confidence of the American people in the outcomes of our elections.

Senator CRUZ. Thank you.

Chair BLUMENTHAL. Mr. Hasen, you've heard Mr. Nobile say in effect that Justice Alito adhered to the wording of the statute. Is that your view?

Mr. HASEN. It is absolutely not my view. Far from apologizing to Justice Alito, as Senator Lee suggested, I want to double down and say that this is an opinion that is unmoored to the text.

You know, for a full explanation, you can read Justice Kagan's dissent, which goes on for many pages and explains this. Let me just give one example. One of the factors that the Senate recognized in its 1982 Report accompanying the revision of section 2 to put in the results test is—one factor that would show a violation of section 2 is if the State offers a tenuous justification for its law.

What this means is, the States often—as Justice Kagan explains in her dissent, States often will use neutral-sounding rationales for passing laws like preventing fraud, promoting voter confidence, protecting the purity of a ballot box.

What Congress decided when it passed section 2 in its revised form in 1982 was you've got to look and see is that a real justification? If a State comes forward and says, we're trying to prevent fraud, you put the State to the evidence and you say, where is the evidence of fraud that would justify this law. Some laws are in fact justified by preventing fraud.

I don't think all—you know, all claims of laws as being anti-fraud is wrong. Sometimes that's correct. What the Senate report and what the section 2, the text of section 2 require, is asked, is this a real reason? The State has to be asked to put forward its evidence. Where's your evidence of fraud?

What Justice Alito says, in one of his five so-called guideposts, which he tells us are not factors and, you know, he's not committing anything for the future, but says here are some things to look at. He says, the strength of the State's interest. He says explicitly that the State can assert an interest in preventing voter fraud, and then not prove that voter fraud is a problem. It can just rely on that as a pretext.

This is what I mean that this is anti-textualism. It turns section 2 on its head by letting the State get a free pass, and at the same time, upping the burdens that apply to minority voters.

If a law is only a usual burden of voting or an inconvenience, and even if it has a disparate impact on minority voters under Justice Alito's warped interpretation of section 2, that's not a section 2 violation. That's exactly the opposite of what those Senate factors say. I should say, those Senate factors were drawn from Supreme Court decisions, predating *City of Mobile*, including *White v. Regester*.

Justice Alito is not following precedent. He's not following text. He's doing exactly the opposite. This is not as another one of the

witnesses said, Voting Rights Act 101. This is a perversion of the Voting Rights Act. I can't say strongly enough every time I read the *Brnovich* decision, I get angrier and angrier about how Justice Alito has worked the interpretation of the Act and turned it from something that protects minority voters into something that protects States from attacks on laws that are discriminatory.

Chair BLUMENTHAL. Thank you. Let me ask you, in real-time, right now, not at the time of Jim Crow, but right now, we're seeing a wave—a tsunami of voter suppression laws—and let me just ask you the laws that have been passed by Arizona and Florida and Georgia and Texas, potentially, that reduce the hours of voting, in-person voting, are those voter suppression laws done by Republican legislatures or Democratic-controlled legislatures?

Professor HASEN. I think if you look, today, almost all of the cutbacks in voting rules are being passed almost along party lines by Republican legislatures and by Republican election officials.

Chair BLUMENTHAL. Those laws that limit balloting hours and polling places or the circumstances of mail-in voting or absentee voting, or in the case of *Harris County* in Texas, 24-hour balloting, laws that forbid sending unsolicited applications for absentee ballots, not the ballots themselves. All of those voting suppression laws are passed along party lines with by and large Republican-controlled legislatures approving them, correct?

Professor HASEN. Yes, that's correct.

Chair BLUMENTHAL. I think we have it from actually the lawyer representing the Arizona Republican party in the U.S. Supreme Court when he was asked, and I cited earlier by Justice Barrett, "What is the interest of the Arizona Republican party in keeping out of precinct ballot rules on the books?" By the way, out of precinct ballot rules, forbid votes from being counted when they are cast out of precinct. What's the interest in effect of keeping those votes from being counted?

Michael Carvin answered, quote, "Because it puts us, the Republican Party, at a disadvantage relative to Democrat. Politics is a zero-sum game."

I began with the hope that we were going to have some degree of bipartisanship because voting itself shouldn't be a partisan exercise. We ought to have bipartisan agreement that voting is a good thing. Every one of the witnesses, in fact, agreed with Senator Padilla's high school teacher that maximum participation in voting by eligible citizens is a good thing.

Instead of voter suppression, we ought to be engaged in voter encouragement. That's not the result of these voter suppression laws that are enabled and embolden by *Brnovich* and *Shelby County*. We need the John Lewis Voting Rights Advancement Act to protect those rights.

I understand the Ranking Member has something he wants to put in the record.

Senator CRUZ. Thank you, Mr. Chairman. Senator Lee asked me to introduce this for him. This is a letter from Cleta Mitchell, an attorney analyzing the Georgia election reform bill. Without objection, I'd like this letter entered into the record.

Chair BLUMENTHAL. Without objection.

[The information appears as a submission for the record.]

Senator CRUZ. I would also—if I might ask a couple of questions?

Chair BLUMENTHAL. Sure.

Senator CRUZ. The Chairman just suggested a minute ago that limiting early voting was somehow voter suppression and even racist. Mr. Cuccinelli, do you know how many days early voting the State of Texas has?

Mr. CUCCINELLI. Yes, the State of Texas has 17 early days of voting.

Senator CRUZ. Do you know how many days of early voting State of Georgia has?

Mr. CUCCINELLI. Georgia has 17 days of early voting.

Senator CRUZ. Do you know how many days of early voting the State of Arizona has?

Mr. CUCCINELLI. 18 days of early voting.

Senator CRUZ. Okay. How about Chairman Blumenthal's home State of—home State of Connecticut? How many days of early voting?

Mr. CUCCINELLI. Zero.

Senator CRUZ. Connecticut has zero?

Mr. CUCCINELLI. Zero.

Senator CRUZ. I thought no early voting was racist voter suppression?

Mr. CUCCINELLI. I don't think it is. Certainly the allegation's been made.

Senator CRUZ. Maybe Connecticut's an outlier. How about Delaware, the home State of President Biden? Surely they've got more than these horrible States of Texas and Georgia, right?

Mr. CUCCINELLI. No early voting in Delaware.

Senator CRUZ. Zero?

Mr. CUCCINELLI. Zero.

Senator CRUZ. Like not one day?

Mr. CUCCINELLI. Not one day.

Senator CRUZ. Why are Democrats claiming no early voting is voter suppression when Democratic States like Connecticut and Delaware have zero, nada, zilch?

Mr. CUCCINELLI. Because it is politically convenient to do so.

Senator CRUZ. Thank you.

Chair BLUMENTHAL. I might just point out to the Ranking Member what his own residents told me earlier today. As I mentioned earlier, I wish he'd been there. The effects of those laws on their practical access to the ballot place, the intimidation that has taken place in Texas as a result of those laws.

In Connecticut, we are moving toward expanding voting access through both statutes and constitutional amendments. It is exactly the opposite trend. Instead of constraining and restricting ballot access as is being threatened in the State of Texas, State of Connecticut is actually moving to expand voting rights.

Senator CRUZ. Mr. Chairman, what do you do with the fact that voter turnout has increased and minority voter turnout has increased in the States that you're demonizing right now?

Chair BLUMENTHAL. Voting acts—voting turnout increased across the country. As the Ranking Member well knows, the rights of individuals are not measured in the overall numbers of turnout. They're measured in individual access to the ballots. A measure

that restricts in a discriminatory way that access to the ballot is wrong and should be held illegal. The purpose of the John Lewis Voting Rights Advancement Act is to open that kind of access.

Mr. CUCCINELLI. May, I make it——

Senator CRUZ. Is Connecticut's current law vote suppression, with no early voting at all?

Chair BLUMENTHAL. We're moving in the direction of opening ballot access through statutes that have been passed during this session of the legislature and the constitutional amendment that is in progress we passed overall.

Senator CRUZ. Thank you.

Mr. CUCCINELLI. If I may, on early voting——

Chair BLUMENTHAL. I have to say—I don't mean to interrupt. We have a vote that I believe—we can carry on this dialog if you want to take a recess. Senator Cruz, there's a vote ongoing and——

Senator CRUZ. We can go back or maybe let Mr. Cuccinelli go.

Mr. CUCCINELLI. My comment will be 30 seconds, Mr. Chairman.

Chair BLUMENTHAL. Go right ahead.

Mr. CUCCINELLI. In the *NAACP* v. *McCrory* case, 5 years ago, the trial court went painstakingly through the experts from the NAACP common cause and so forth, the petitioners in that case, and found their academic writings concluded outside of the parameters of the case that early voting either made no change in turnout or modestly reduced turnout.

It was referred to as convenience voting including by some of the experts. It is more convenient, but it does not increase turnout according to the academic writings of the experts on the left.

Chair BLUMENTHAL. This hearing is adjourned. There will be a week and the record will be kept open for that week for anyone to ask questions.

I thank the witnesses and thank my colleagues for participating. Thanks very much.

[Whereupon, at 5:37 p.m., the hearing was adjourned.]

[Additional material submitted for the record follows.]

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July 14, 2021

Statement of Hon. Kenneth T. Cuccinelli, II
Chairman, Election Transparency Initiative
Former Virginia Attorney General; Former Acting Deputy Secretary,
Department of Homeland Security

Chairman Blumenthal, Ranking Member Cruz and Members of the Subcommittee, thank you for inviting me today to discuss the quality and integrity of our voting systems. I am Ken Cuccinelli and I previously served as the Attorney General of Virginia. I currently serve as the national chairman of the Election Transparency Initiative, where we work every day to help improve the transparency, security, accessibility and accountability of elections in every state, so that every American – regardless of party or race – has confidence in the outcome of every election.

To begin with, as states seek to address the shortcomings in their own election systems, it would help to get beyond the hyperbolic, and libelous, rhetoric that each and every rule or procedure is not only an onerous restriction, but is allegedly knee-jerkingly racist, particularly given that in America today it is easier to vote than ever before.

Imagine an election with no rules. Just a table with a stack of empty ballots. Nobody is watching the table. Nobody is dispensing the ballots. Anyone who comes along can fill out a ballot (and since nobody is watching, as many as they choose), and drop those ballots into a drop box. For good measure we will mail a blank ballot to every single name listed in an outdated pollbook and let anyone return those ballots to unsecured drop boxes.

No one would trust the outcome of that "unrestricted," voting process.

We need rules. I.e., time, place and manner rules.

Only citizens can vote. A reasonable rule.

Citizens have to register and Registrars have keep pollbooks up to date. A reasonable rule.

One ballot per registered voter. A reasonable rule.

Enforceable transparency is required so everyone can see the election is clean and secure from start to finish – every step of the way. A reasonable rule.

Ensure each voter is who they say they are. A reasonable rule. The Carter-Baker Commission recommended it and overwhelming majorities of Americans support it.

Nevertheless, voter I.D. has been particularly politicized by the radical left propaganda machine. Yet despite 6 months of media-assisted assaults on the basic common sense need for voter I.D., the American people have been unmoved in their overwhelming support for this basic election integrity measure. It might explain why some very high profile propounders of the false "voter I.D. is racist" propaganda – like Stacey Abrams – have suddenly flip-flopped to get on the right side of the polling.

So, on the basic mechanics of how elections should best be run, when you take the discussion out of the overcharged political atmosphere of the day, Americans tend to agree on what it takes to run good elections.

We have seen that one does not need fraud to shake confidence in an election. Does anyone remember *Bush v. Gore*? In 2000, Florida's election system was held up before the world as a sad joke – incompetence, election breakdowns, untrustworthy ballots and machines, and haphazard and inconsistent rules. Americans' confidence was shaken.

In 2000, the left was screaming its lack of confidence in our elections. And again in 2016 and 2018 Democrats questioned election results.

Highly regarded pollster Scott Rasmussen wrote an article this year in which he recorded that while 31% of Americans lacked confidence that America swore in the correct person as President following the election of 2020, 26% held the same view in 2016 – and there is not much overlap between those two groups.

Here, in the U.S. Senate, you can learn from Florida. How did the people of Florida respond to the shocking revelation of just how poor their election system was in 2000? They set about fixing their laws and procedures, and in many parts of the state, they improved the quality of their personnel.

States can and are working to upgrade and improve their elections systems, but it is important that Washington not step in to dictate its own one-size-fits-all approach

that is really more about control of elections by one party than achieving the confidence of the American people in the outcome of our elections.

The first and most important thing the Senate can do, is stick with the Voting Rights Act in its current form to fight actual discrimination where it occurs, as noted in *Brnovich*, and not go beyond it to a partisan federal takeover of our elections.

One need only look back at Florida 20 years after *Bush v Gore*. When much of the country suffered election breakdowns in their states, Florida – the third largest state, and the largest swing state – smoothly tallied its votes with no significant complaints from either side.

Citizens can have confidence in their elections, but only if the federal government doesn't force them to eliminate basic rules of fair and accurate elections.

This hearing is reflecting on the *Shelby County* and *Brnovich* decisions by the U.S. Supreme Court. The simple reason the *Shelby County* and *Brnovich* decisions are right is because they are based on facts, not hysteria.

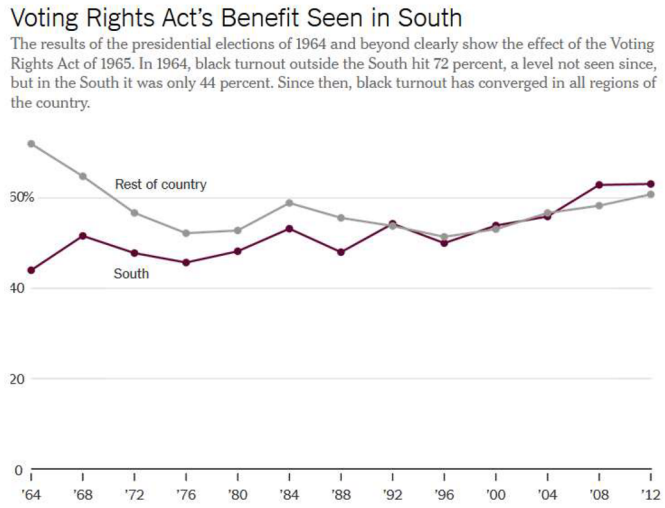
Given the pure volume of hysteria, I think that bears repeating: The reason the *Shelby County* and *Brnovich* decisions are right is because they are based on facts, not hysteria.

I would note that both HR1/S1 and the discussion of nation-wide preclearance with no objective basis both require an assumption that America is worse off today as it relates to voting access than it was in 1965 – a patently ludicrous assumption, and one directly at odds with the Supreme Court's conclusion in the *Shelby County* decision of 2013.

In *Shelby County*, the Supreme Court noted that the preclearance requirements of the Voting Rights Act constituted an "uncommon exercise of congressional power" that was warranted by the "exceptional conditions" existing in 1965, including tests and hurdles to registering to vote and voting in some parts of the country, particularly the South, including my home state of Virginia. The result of those obstacles was substantially lower black voter participation.

As you can see in the graph below (from the New York Times, using Census Bureau data), once the restrictions targeted in the Voting Rights Act were removed, black adults in the South began to engage in elections at rates that quickly approached the

rest of the country, actually surpassing black voters in the rest of the country by 1992.



Beyond equalizing access to voter registration and voting, the Supreme Court noted that in 2013 "…discriminatory evasions of federal decrees are rare. And minority candidates hold office at unprecedented levels." Under those circumstances, federal preclearance could not be constitutionally sustained as it was not based on "current political conditions."

Those 'current political conditions' are shown in the steady, positive changes in the voting and registration data compiled by the Census Bureau over the years to see that while we are not perfect, America has – thankfully – left its days of racially suppressive voting laws behind. (References can be found at: https://www.census.gov/topics/public-sector/voting.html)

Last month, in the completely unsurprising *Brnovich* decision, the Supreme Court further noted that Section 2 of the Voting Rights Act is alive and well and available

to the federal government to use to attack actual instances of discrimination – as it should be.

I mention this because I am concerned that many leaders on the left talk about the *Shelby County* decision as if the federal government's authority to stop discrimination was held unconstitutional, which everyone on this Subcommittee knows is not the case. Only the outdated preclearance formula was found to be unconstitutional. But it seems that some on the left want to mislead the American people in an effort to build artificial pressure for a federal takeover of elections.

And to be clear about what we mean when we say a "federal takeover of elections," it is hard to read many of the provisions of S.1. and conclude anything other than that its proponents want to make it easy to cheat and hard to prove. At the Election Transparency Initiative our goal is to make it easy to vote and hard to cheat.

To point to but one example, the provisions of S.1. that 1) require states to dump the names from their various databases onto their voter rolls, 2) combined with the vaguely-worded provisions that threaten state employees with federal criminal prosecution if they question whether any particular person might not qualify to vote, 3) combined with eliminating the penalties for non-citizens actually voting in our elections (in a bill full of integrity-destroying provisions, this one may be the most extraordinary of all), makes it impossible for a reasonable observer to conclude anything other than the proponents of S.1. intend for massive numbers of non-citizens, including illegal aliens, to be registered to vote and to actually vote in our elections.

As it relates to last Congress' version of the Voting Rights Act amendments ("the amendments"), let me start by noting what was NOT advanced in the last Congress. Specifically, Republicans unsuccessfully proposed that a version of the amendments be advanced that would utilize traditional metrics of accessibility of voting, i.e., voter registration and turnout (there are no more "tests" for voter registration), which the Supreme Court upheld in *Katzenbach* back in 1966 specifically because it relied on two measures that bore directly on the existence of racial discrimination. Specifically, 1) the then-recent existence in a state of tests or devices for voter registration, and 2) an abnormally low (compared to uncovered states) voter turnout. The Supreme Court determined that the tests and devices were the tools used to perpetrate disenfranchisement, while low voter turnout was the result, i.e., cause and result.

It is of further note that it is now well-established within the Department of Justice's titular Voting Rights Section, that extreme left-wing, ideological lawyers purposefully target Republican jurisdictions in an apparent attempt to obtain political advantages for Democrats. With Attorney General Garland announcing a hiring spree for that Section, this bad problem can be expected to get worse.

Recent evidence of the problem is the politicized lawsuit recently filed against Georgia by the Department of Justice (Voting Rights Section) asserting – in unusually political terms – that Georgia's recent modest reforms to its election system were enacted in order to discriminate against black voters in Georgia. In light of the complaints in Georgia about election administration – dating back to 2018 (by Democrats) – it should be no surprise to anyone that Georgia's General Assembly would seek to make improvements. That those improvements have been the subject of some of the most brazen and dishonest attacks seen in American politics in years, including by President Biden, indicates that cleaning up Georgia's elections is deemed by those doing the attacking, i.e., Democrats, to somehow disadvantage their "side."

When someone thinks cleaner and smoother elections are disadvantageous, I am hard pressed to discern a defensible reason for such a position.

Finally, I would share a bit of my experience as an Attorney General of a covered jurisdiction – Virginia. We always had to struggle with the never-well-delineated demands of Section 2 and Section 5 of the Voting Rights Act when it came to redistricting. To put it in simple terms, Section 2 reasonably demands that a state's laws be developed and implemented without regard to race, while Section 5 required covered states to take into account race when drawing district lines, with the general goal of no retrogression. Needless to say, it is actually impossible to do both. It is possible to do both yet not discriminate, but the preclearance requirement made this arrangement subject to great arbitrariness on the part of the Department of Justice.

And that is just redistricting. With over 100 election jurisdictions in Virginia, the aggregate burden of complying with preclearance was enormous. I readily concede that burden made sense when the VRA was put in place, but it cannot be justified today.

Again, for those of you who have not had to contend with preclearance in your careers, it covers the smallest of trivia. For example, we have approximately 2,500 voting precincts in Virginia. They are in schools, churches, government buildings, and the list goes on. To do something as pedestrian as moving a voting location from

the local school to the local firehouse – for one, single precinct – a locality had to ask permission of the federal government for that change, and thus had to go through the preclearance process. While the overwhelming majority of such requests end up being approved, the process often comes with requirements for information and what amount to interrogatories. All for one of the simplest elements of election administration. Then multiply that through all of the different aspects of an election and you begin to see the extraordinary burden involved.

The term "federal takeover" describes such a situation very accurately, and it cannot be justified as achieving anything other than political control of elections, perhaps one of the only results that could actually take America's shaky confidence in its elections to an even lower place. I would ask the Senate not to go down that path.

WRITTEN STATEMENT OF
JOSE GARZA
VOTING RIGHTS COUNSEL
MEXICAN AMERICAN LEGISLATIVE CAUCUS, TEXAS HOUSE OF REPRESENTATIVES

"Restoring the Voting Rights after *Brnovich* and *Shelby County*"

United States Senate Judiciary Committee, Subcommittee on the Constitution

Hearing on July 14, 2021

Mr. Chairman and members of the Judiciary Committee, Subcommittee on the Constitution, thank you for the opportunity to testify regarding the enforcement of the Voting Rights Act in Texas and the impact of *Brnovich* and *Shelby County* on that enforcement. I come to you as a long time litigator, who has represented the minority community in challenges to local, as well as state-enacted practices of voting discrimination. My name is Jose Garza, and I am the voting rights counsel for the Mexican American Legislative Caucus. The Mexican American Legislative Caucus (MALC) was founded in 1973 in the Texas House of Representatives by a small group of lawmakers of Mexican American heritage for the purpose of strengthening their numbers and better representing a united Latino constituency across the State. MALC is the oldest and largest Latino legislative caucus in the United States.

As of 2021, MALC has a membership of 41 House members from all parts of the State and is the largest nonpartisan caucus in the Texas Legislature. MALC Members sit on all Committees in the Texas House of Representatives and work together on matters of consequence to our state's large and growing Latino constituency. For almost 30 years MALC has been active in protecting Latino voting rights, not only in the legislative process, but also in the courts.

Meant to fulfill the promise of the 15th Amendment, to end discrimination in voting, the Voting Rights Act was enacted on August 6, 1965. The VRA was viewed as a crowning moment in the civil rights movement. The VRA gave us tools with which to enforce the protections promised by the Act. Section 2 of the act provides nationwide coverage that targets practices, policies and electoral devices that disadvantage minority voters and deny equal access. Section 5, or preclearance requires states with a known history of discrimination in voting, to obtain "preclearance" of voting changes before implementing those changes.

However, some court rulings have slowed the progress of ridding the country of discrimination in voting by limiting the VRA's reach and thus by limiting its impact, and have created obstacles to full minority voter access. In some instances, these efforts to limit the VRA have been met with restorative Congressional action. For instance, after the Supreme Court in *Mobile* determined that actions under Section 2 of the Act required a showing of intent to establish violations of the Act, Congress acted to restore its effectiveness. Thus, in 1982 Section 2 of the Voting Rights Act was amended to prohibit all States and political subdivisions from imposing any voting qualifications or prerequisites to voting, or any standards, practices, or procedures which *result* in the denial or abridgment of the right to vote of any citizen who is a member of a protected class of racial and language minorities.

Recent Supreme Court rulings once again require Congressional action to restore the VRA to its intended purpose.

Section 5

First, with its decision in *Shelby County v. Holder*, which concluded that Congress was using an outdated formula to decide which states and jurisdictions were required to go through the preclearance process, while we still have preclearance on the books — no state or jurisdiction currently has to abide by it. Writing for the court in 2013, Chief Justice John Roberts suggested that because times had changed for the better, preclearance may not be needed. However, he pointed to Section 2 as a safeguard: "Our decision in no way affects the permanent, nationwide ban on racial discrimination in voting found in Section 2."

Thus newly enacted discriminatory election practices remain enforceable until challenged and found to violate either Section 2 or the 14th amendment. This of course requires an expensive and time consuming legal process that can have devastating impacts in the meantime.

In one recent case, the real life impact of that difference came to have a devastating impact. In *Veasey v. Abbott*, MALC and other plaintiffs challenged Texas' efforts to infringe on the right of minority voters, especially poor and elderly Texas voters, to participate in the political process by the imposition of an

extremely restrictive voter ID requirement. Poor, elderly Latino and African American clients sued Texas, because the restrictions placed on voting through the Texas voter ID law would disenfranchise them. I represented both MALC and legal aid clients in that action.

In 2011, Texas (the "State") passed Senate Bill 14 ("SB 14"), which required individuals to present one of a limited set of acceptable forms of photo identification to vote. *See* Act of May 16, 2011, 82d Leg., R.S., ch. 123, 2011 Tex. Gen. Laws 619. SB 14 was initially blocked by the Voting Rights Act's preclearance provisions. *See Texas v. Holder*, 888 F.Supp.2d 113 (D.D.C. 2012). However, on June 25, 2013, immediately after the Supreme Court decided *Shelby County, Alabama v. Holder*, Texas began enforcing SB 14, ignoring the findings of discrimination in the Section 5 proceedings. Numerous Plaintiffs, including MALC and my legal aid clients, filed legal challenges to the voter ID law pursuant to Section 2 of the Voting Rights Act as well as the United States Constitution. We alleged that SB 14 was enacted by the State with a racially discriminatory purpose, and that it had a racially discriminatory impact on Latino and African American voters of Texas in that it placed an undue burden on their fundamental right to vote. [1]

[1] The resources necessary to litigate this case were extreme. Without resources devoted to this case by MALC, TRLA, NAACP, BRENNAN CENTER, LAWYERS' COMMITTEE etc. this case could not have been properly prosecuted.

After a nine-day bench trial featuring both live and deposition testimony from dozens of expert and lay witnesses, the Federal District Court issued a comprehensive opinion holding:

> SB 14 creates an unconstitutional burden on the right to vote [under the First and Fourteenth Amendments], has an impermissible discriminatory effect against Hispanics and African-Americans [under Section 2], and was imposed with an unconstitutional discriminatory purpose [in violation of the Fourteenth and Fifteenth Amendments and Section 2]. [SB 14 constitutes an unconstitutional poll tax [in violation of the Fourteenth and Twenty-Fourth Amendments].

Veasey v. Perry, 71 F.Supp.3d 627, 633 (S.D. Tex. 2014) (footnote omitted).

Pursuant to that opinion, the Court entered "a permanent and final injunction against enforcement of the voter identification provisions" of SB 14 and directed the State to "return to enforcing the voter identification requirements for in-person voting in effect immediately prior to the enactment and implementation of SB 14." *Id.* at 707.

However, Texas appealed that decision to the Fifth Circuit and secured a stay of the District Court order. The Fifth Circuit panel affirmed the Court's finding that SB 14 had discriminatory results in violation of Section 2 and remanded for consideration of the proper remedy. *Veasey v. Perry*, 796 F.3d 490, 493, 498 (5th Cir. 2014). The State filed a petition for rehearing en banc, which was granted. *Veasey v. Abbott*, 815 F.3d 958 (5th Cir. 2016) (granting rehearing *en banc*). Upon

rehearing, the full Fifth Circuit again affirmed the District Court's finding that SB 14 violated Section 2 because of its discriminatory results and remanded to determine the appropriate remedy. *Veasey v. Abbott*, 830 F.3d 216, 272 (5th Cir. 2016) (en banc decision).

On August 10, 2016, following the instructions of the full Fifth Circuit, the District Court ordered interim relief for the November 8, 2016 election (as well as prior and subsequent state and local elections) directing, *inter alia*, the State and its election officials to accept several forms of identification in addition to those mandated by SB 14 upon the completion and signing of a reasonable impediment declaration by the voter. This relief remained in place until SB 14 was amended to largely incorporate this Court's interim relief into State law. The Fifth Circuit held that this amendment did not moot the case but, by "essentially mirror[ing the] agreed interim order," constituted an acceptable remedy under the Fifth Circuit's 2016 ruling that SB 14 violated Section 2. *Veasey v. Abbott*, 888 F.3d 792, 804 (5th Cir. 2018).

During the trial, MALC presented evidence of the hostile legislative environment surrounding the enactment. Representatives Ana Hernandez, Rafael Anchia and Trey Martinez Fischer gave dramatic testimony of how the legislation was forced to a vote, rules changed to ensure passage, and the acrimonious atmosphere during debate that infected the process.

Plaintiffs also presented the testimony of the Plaintiffs and of an expert witness, exhibits and arguments that demonstrated the real and personal impact caused by SB 14. The Court cited to that testimony in her opinion. *See Veasey v. Abbott*, 71 F. Supp. 3d 627, 667-678 (S.D. Tex. 2014)(e.g. describing the financial burden imposed by the requirements: "Some Plaintiffs testified that they were either unable to pay or that they would suffer a substantial burden in paying the cost associated with getting a qualified SB 14 ID or the necessary underlying documents." One of my clients, Mr. Mendez testified about his family's "very sad" financial state, explaining that "[e]ach month by the last week there's no food in the house and nothing with which to buy any, especially milk for the children. Then my wife has to go to a place to ask for food at a place where they give food to poor people." Mr. Mendez was embarrassed to admit at trial that having to pay for a new birth certificate was a burden on him and his family. Another of my elderly clients, Mr. Lara described his financial situation by stating that "we got each our little ... small amount of cash ... and we try to ... stretch it out as possible by the end of the month, and sometimes we'll make it and sometimes we won't." His wife, described her financial state as both difficult and very stressful. *Veasey,* 71 F. Supp. 3d at 671-729 (citations omitted). Plaintiffs' expert testified that the financial burdens of compliance with SB 4 on these voters placed an undue burden, unlike others who had the ID. *See e.g. Veasey*, 71 F. Supp. 3d at 668, n.272, and 705, n. 570.

These elderly, poor U. S. citizen voters in our interviews talked about the importance of voting in their lives. They told us about how they had never missed an election. They described the joy of walking, on Election Day, to the polling location in their neighborhood, where everyone knew each other and everyone knew them and the pride they felt when they voted. Yet, without the limited ID allowed by the State, nor the means to secure the IDs allowed, and without the remedy eventually imposed by the trial court, they would miss an election and just simply didn't understand why. In fact, one of our clients, Margarito Lara, missed the last election shortly after trial in the case, because of the stay of the Court's order secured by the State. It was the first election he had ever missed in his adult life. Tragically, Mr. Lara passed away before the remedy in the case was imposed.

Finally, the evidence in the case and the findings of the different courts that reviewed the SB 14, also determined that, while Texas has the right to impose rules for voting, whatever voter misconduct the Voter ID law was supposed to cure, no such problem was ever identified or proven.

Section 2

More recently, in *Brnovich v. DNC*, the Supreme Court weakened Section 2 once again. This decision didn't kill the VRA, but it has substantially weakened the

ability of minority plaintiffs to stop the tide of voter-suppression legislation rising from Republican-led statehouses across the country.

The Arizona laws at issue in *Brnovich* threw out votes cast in the wrong precinct and only allow a voter's relative or caregiver to return a mail-in ballot. In January 2020, the 9th Circuit Court of Appeals struck it down because it discriminated against Black, Native American and Latino voters. In the Supreme Court's decision and writing for the majority, Justice Alito acknowledged the discriminatory impact of the law but decided that courts should consider the size of that disparate impact. Just because there is some disparate impact is not enough. Justice Alito said: "The size of any disparity matters," and any comparisons should be "meaningful": "What are at bottom very small differences should not be artificially magnified." And even though the record in the case did not show any significant voter fraud dealing with these issues in Arizona, Justice Alito gave deference to the State's stated purpose for these restrictions. Perhaps if Justice Alito had known my former client, Mr. Lara's story and what voting meant to him, unproven claims of voter fraud would not have justified the Arizona restrictions on voting Justice Alito deemed too small to protect.

Currently, in Texas, the Legislature is considering election law restrictions that limit the opportunity to vote and that will impact minority voters in particular.

Many of the measures, such as restricting mail-in voting, limiting voter-registration opportunities and narrowing the time frame for early voting, don't address voting fraud. The only reason to limit voting hours from 7 a.m. to 7 p.m., as SB 7 in the Texas Senate proposes, is to make it harder for people to vote. No evidence has been presented in the legislative process describing any voter fraud related to these restrictions. Moreover, the record presented during the hearings on these measures makes it clear that where measures similar to those being restricted have been implemented, voter turnout and participation, especially among voters of color, has increased.

Yet, *Brnovich* has made it more difficult than before to use Section 2 as a shield against the discrimination resulting from adopting these measures.

CONCLUSION

Texas has a long history of imposing restrictions on the right to vote that target minority voters. This practice was evident with the adoption of the voter ID law and in the redistricting plans adopted in 2011 and 2013 and has continued through today. The loss of Section 5 protections and the weakening of Section 2 standards has been severely felt by minority Texas voters already. In addition, while some of the litigation on these issues has been successful to this point, it took years to litigate. In fact the redistricting litigation, commenced in 2011 with two trips to the Supreme

Court continues today. The prosecution of these case required millions of dollars and thousands of hours of legal and expert time to properly develop and present and then defend on appeal.[2] And it just goes on and on.

Reform of the Voting Rights Act is vital. We need some form of Section 5 again. We need to clarify the standards by which a Section 2 plaintiff can prosecute a case of voting discrimination and we need the fee shifting provisions of the Act to be meaningful again.

Thank you.

[2] In addition to the need to reform the substance of the Voting Rights Act, the fee shifting provisions need to be addressed as well. This especially true with the jurisprudence on prevailing party that has developed out of the 5th Circuit. Without a vibrant and realistic standard, VRA enforcement will be greatly hampered. Perhaps a topic for another time.

U.S. Senate Committee on the Judiciary,
Subcommittee on the Constitution
Hearing on "Restoring the Voting Rights Act After *Brnovich* and *Shelby County*"
July 14, 2021

STATEMENT OF RICHARD L. HASEN

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Chair Blumenthal, Ranking Member Cruz, and Members of the Senate Judiciary Committee's Subcommittee on the Constitution:

Thank you for the opportunity to appear before you today to speak about the Supreme Court's recent decision in *Brnovich v. Democratic National Committee*,[1] a case which eviscerated Section 2 of the Voting Rights Act[2] outside the context of redistricting.[3] The opinion by Justice Samuel Alito is unmoored to the text of the statute, ignores the relevant history of Voting Rights Act, and thwarts Congress's intent.

I begin with some history. A key component of the Act that Congress passed in 1965, Section 5, required states and localities with a history of racial discrimination in voting to ask either the U.S. Department of Justice or a three-judge court in Washington, D.C. for permission to change any voting rule.[4] "Preclearance" required these jurisdictions to show that minority voters were not made worse off by the change; Congress intended to prevent states from passing new restrictive voting rules when courts struck down old ones. The idea behind preclearance was to prevent backsliding to worse conditions for voting, a concept that came to be known as "nonretrogression."[5]

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[1] ___ U.S. ___, 2021 WL 2690267 (U.S., July 1, 2021).
[2] Voting Rights Act of 1965, § 2 (as amended in 1982), now codified at 52 U.S.C. § 10301 (West 2021).
[3] Within the context of redistricting, the Section 2 standards are well established by the courts, beginning with the Supreme Court's opinion in *Thornburg v. Gingles*, 478 U.S. 30 (1986).
[4] Voting Rights Act of 1965, § 5, now codified at 52 U.S.C. § 10304 (West 2021). Section 4 of the Act, now codified at 52 U.S.C. § 10303 (West 2021), set forth the formula for determining which jurisdictions were covered by Section 5 preclearance. The Supreme Court ruled the formula unconstitutional in *Shelby County v. Holder*, 570 U.S. 529 (2013).
[5] *Reno v. Bossier Parish School Bd.*, 528 U.S. 320 (2000).

Section 5 helped a great deal until the Supreme Court in the 2013 case of *Shelby County v. Holder*[6] held that the statute was no longer constitutional because it infringed on an invented state right to "equal sovereignty."[7] Although Section 5—when it was still in place—was effective in stopping new bad voting laws, it did not deal with discriminatory voting laws already on the books. Thus, if a state already had laws making it hard for minority voters to register or vote, Section 5 could not touch it.

In the years after passage of the initial Voting Rights Act, some litigants tried to use another part of the Act, Section 2, to attack restrictive voting rules already in place. At first the Court agreed that these challenges could go forward, but the Supreme Court in 1980's *City of Mobile v. Bolden*[8] case held that such challenges required proof of intentional discrimination.

Congress disagreed with the Supreme Court's interpretation in *City of Mobile*, and in 1982 Congress passed a revised Section 2.[9] The revision made clear that plaintiffs challenging

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[6] 570 U.S. 529 (2013). The effects of *Shelby County* were immediate and bad for minority voters, as Justice Kagan explained in her *Brnovich* dissent:

> Once Section 5's strictures came off, States and localities put in place new restrictive voting laws, with foreseeably adverse effects on minority voters. On the very day *Shelby County* issued, Texas announced that it would implement a strict voter-identification requirement that had failed to clear Section 5. Other States—Alabama, Virginia, Mississippi—fell like dominoes, adopting measures similarly vulnerable to preclearance review. The North Carolina Legislature, starting work the day after Shelby County, enacted a sweeping election bill eliminating same-day registration, forbidding out-of-precinct voting, and reducing early voting, including souls-to-the-polls Sundays. (That law went too far even without Section 5: A court struck it down because the State's legislators had a racially discriminatory purpose.) States and localities redistricted—drawing new boundary lines or replacing neighborhood-based seats with at-large seats—in ways guaranteed to reduce minority representation. And jurisdictions closed polling places in mostly minority areas, enhancing an already pronounced problem. Pettigrew, The Racial Gap in Wait Times, 132 Pol. Sci. Q. 527, 527 (2017) (finding that lines in minority precincts are twice as long as in white ones, and that a minority voter is six times more likely to wait more than an hour).

Brnovich, 2021 WL 2690267, at *26 (Kagan, J., dissenting) (some citations omitted).

[7] Leah M. Litman, *Inventing Equal Sovereignty*, 114 MICH. L. REV. 1207 (2016).

[8] 446 U.S. 55 (1980).

[9] *Gingles*, 478 U.S. at 43-44 ("The Senate Report which accompanied the 1982 amendments elaborates on the nature of § 2 violations and on the proof required to establish these violations. First and foremost, the Report dispositively rejects the position of the plurality in *Mobile v. Bolden*, 446 U.S. 55 (1980), which required proof that the contested electoral practice or mechanism was adopted or maintained with the intent to discriminate against minority voters.") (footnote omitted); *id.* at 44 n.8 ("The Senate Report states that amended § 2 was designed to restore the 'results

voting rules did not have to prove that a jurisdiction acted with an intent to discriminate against minority voters; it was enough to show that "the political processes leading to nomination or election in the State or political subdivision are not equally open to participation" by members of a protected class "in that its members have *less opportunity* than other members of the electorate to participate in the political process and to elect representatives of their choice."[10] It is a type of disparate impact standard.[11] As Justice Kagan's dissent in *Brnovich* put it succinctly, "Section 2 demands proof of a statistically significant racial disparity in electoral opportunities (not outcomes) resulting from a law not needed to achieve a government's legitimate goals."[12]

The 1982 amendment to Section 2 created a broad statute in which Congress told courts to look at the "totality of the circumstances" in deciding whether a law gave minority voters "less opportunity" than white voters to participate and elect.[13] Among the factors were the socioeconomic conditions which could make minority voters face extra barriers to voting, and the tenuousness of the supposedly neutral justifications states could advance for passing restrictive voting rules.[14]

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test'—the legal standard that governed voting discrimination cases prior to our decision in *Mobile v. Bolden*, 446 U.S. 55 (1980). S.Rep., at 15–16. The Report notes that in pre-*Bolden* cases such as *White v. Regester*, 412 U.S. 755 (1973), and *Zimmer v. McKeithen*, 485 F.2d 1297 (CA5 1973), plaintiffs could prevail by showing that, under the totality of the circumstances, a challenged election law or procedure had the effect of denying a protected minority an equal chance to participate in the electoral process. Under the 'results test,' plaintiffs are not required to demonstrate that the challenged electoral law or structure was designed or maintained for a discriminatory purpose. S.Rep., at 16, U.S.Code Cong. & Admin.News 1982, p. 193.").

[10] 52 U.S.C. § 10301(b) (emphasis added).

[11] Nicholas Stephanopoulos, *Disparate Impact, Unified Law*, 128 YALE L. J. 1566, 1617–19 (2019).

[12] *Brnovich*, 2021 WL 2690267, at *30 (Kagan, J., dissenting).

[13] 52 U.S.C. § 10301(b).

[14] The Court in *Gingles* repeatedly referenced the Senate Report accompanying the 1982 Voting Rights Act amendments to understand the meaning of Section 2's admonition that minority voters should not have "less opportunity" than other voters to participate in the political process and elect representatives of their choice:

> The Senate Report which accompanied the 1982 amendments elaborates on the nature of § 2 violations and on the proof required to establish these violations. First and foremost, the Report dispositively rejects the position of the plurality in *Mobile v. Bolden*, 446 U.S. 55 (1980), which required proof that the contested electoral practice or mechanism was adopted or maintained with the intent to discriminate against minority voters. The intent test was repudiated for three principal reasons—it is "unnecessarily divisive because it

Although the Supreme Court interpreted Section 2 many times in the context of redistricting cases, until *Brnovich*, the Court had never interpreted the issue in vote denial cases, in which a state or locality makes it harder for minority voters to register and vote. Lower courts had read Section 2 to set forth a tough standard for overturning a state law, but one that could be met in appropriate cases. The 5th Circuit, for example, one of the country's most conservative courts, held that Texas' very strict voter identification law violated Section 2;[15] when Texas eased its law in response to litigation, the 5th Circuit held it no longer violated the statute.[16]

Justice Alito's opinion in *Brnovich,* ignoring the text of Section 2, the statute's comparative focus on lessened opportunity for minority voters, and the history that showed

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involves charges of racism on the part of individual officials or entire communities," it places an "inordinately difficult" burden of proof on plaintiffs, and it "asks the wrong question." The "right" question, as the Report emphasizes repeatedly, is whether "as a result of the challenged practice or structure plaintiffs do not have an equal opportunity to participate in the political processes and to elect candidates of their choice."

> In order to answer this question, a court must assess the impact of the contested structure or practice on minority electoral opportunities on the basis of objective factors. The Senate Report specifies factors which typically may be relevant to a § 2 claim: the history of voting-related discrimination in the State or political subdivision; the extent to which voting in the elections of the State or political subdivision is racially polarized; the extent to which the State or political subdivision has used voting practices or procedures that tend to enhance the opportunity for discrimination against the minority group, such as unusually large election districts, majority vote requirements, and prohibitions against bullet voting; the exclusion of members of the minority group from candidate slating processes; the extent to which minority group members bear the effects of past discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the political process; the use of overt or subtle racial appeals in political campaigns; and the extent to which members of the minority group have been elected to public office in the jurisdiction. The Report notes also that evidence demonstrating that elected officials are unresponsive to the particularized needs of the members of the minority group and that the policy underlying the State's or the political subdivision's use of the contested practice or structure is tenuous may have probative value. The Report stresses, however, that this list of typical factors is neither comprehensive nor exclusive. While the enumerated factors will often be pertinent to certain types of § 2 violations, particularly to vote dilution claims, other factors may also be relevant and may be considered. Furthermore, the Senate Committee observed that "there is no requirement that any particular number of factors be proved, or that a majority of them point one way or the other." Rather the Committee determined that "the question whether the political processes are 'equally open' depends upon a searching practical evaluation of the 'past and present reality,' and on a "functional" view of the political process.

Gingles, 478 U.S. at 43-44 (citations and footnotes omitted).

[15] Veasey v. Abbott, 830 F.3d 216, 264-65 (5th Cir. 2016) (en banc).

[16] Veasey v. Abbott, 888 F.3d 792 (5th Cir. 2018).

Congress intended to alter the status quo and give new protections to minority voters, offered a new and very difficult test for plaintiffs to meet to show a Section 2 vote denial claim.

Rather than focus on the totality of the circumstances test written into the law and conduct a local, functional inquiry as explained in the key 1982 Senate Report—which itself drew from the Supreme Court's decision in cases such as *White v. Register*—*Brnovich* offered non-binding so-called "guideposts" for decision.[17] Eschewing the textualist approach purportedly favored by many of the Justices in the *Brnovich* majority, the opinion creates an ad hoc test meant less as guideposts and more like roadblocks for voting rights plaintiffs, giving states defending restrictive voting laws numerous ways of defeating Section 2 claims.[18]

One guidepost rolls the clock back to 1982, holding that if a voting practice was not common during the year when Congress amended Section 2, it is likely not a violation for a state to eliminate the practice even if it would disparately impact minority voters. The idea that Section 2 requires plaintiffs to demonstrate that voting restrictions exceed the "usual burdens of voting"[19] as they existed in 1982 is flatly contradicted by the textual command of Section 2 to find a violation when minority voters have "less opportunity" than others to participate in the political process and elect representatives of their choice.

Nothing in Section 2's text, history, or precedent supports a 1982 benchmark, a time when early voting was scarce and voter registration difficult in many places. This is the opposite

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[17] *Brnovich*, 2021 WL 2690267, at *10 ("we decline in these cases to announce a test to govern all VRA § 2 claims involving rules, like those at issue here, that specify the time, place, or manner for casting ballots. . . . All told, no fewer than 10 tests have been proposed. But as this is our first foray into the area, we think it sufficient for present purposes to identify certain guideposts that lead us to our decision in these cases.").

[18] The five "guideposts" the majority opinion identified are: "the size of the burden imposed by a challenged voting rule," *id.* at *12; "the degree to which a voting rule departs from what was standard practice when § 2 was amended in 1982," *id.*; "[t]he size of any disparities in a rule's impact on members of different racial or ethnic groups," *id.* at *13; "the opportunities provided by a State's entire system of voting when assessing the burden imposed by a challenged provision," *id*; and "the strength of the state interests served by a challenged voting rule," *id.*

[19] *Id.* at *12.

of the nonretrogression principle that used to apply in Section 5 cases. That principle kept states from making voting worse; the *Brnovich* 1982 factor encourages rollbacks by setting 1982 as the baseline.

The *Brnovich* guidepost naming the strength of the state's interest in its voting rules turns the "totality of the circumstances" tenuousness standard on its head. Under the tenuousness standard, if a state passed a restrictive voting law and claimed it was necessary to stop voter fraud, the state would have to *prove* that this was the real justification and not a pretext for discrimination. As Justice Kagan explained in her dissent, "Throughout American history, election officials have asserted anti-fraud interests in using voter suppression laws."[20]

But the *Brnovich* guidepost in practice does exactly the opposite of searching for tenuousness: the Court repeatedly says restrictive state voting laws could be justified by a concern over voter fraud even if a state could not point to any fraud in its state to justify its challenged laws.[21]

Finally, even if a state passes a law with the intent to discriminate against minority voters, plaintiffs will have a hard time proving a Section 2 violation under *Brnovich*. In *Brnovich*[22] and other recent cases,[23] the Supreme Court has made it hard to win voting rights

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[20] *Id.* at *38 (Kagan, J., dissenting).
[21] *Compare id.* at *13 ("One strong and entirely legitimate state interest is the prevention of fraud. Fraud can affect the outcome of a close election, and fraudulent votes dilute the right of citizens to cast ballots that carry appropriate weight. Fraud can also undermine public confidence in the fairness of elections and the perceived legitimacy of the announced outcome"), *and* *20 ("And it should go without saying that a State may take action to prevent election fraud without waiting for it to occur and be detected within its own borders."), *with id.* at *33 (Kagan, J., dissenting) ("Throughout American history, election officials have asserted anti-fraud interests in using voter suppression laws."), *and* *38 (Kagan, J., dissenting) ("Arizona has not offered any evidence of fraud in ballot collection, or even an account of a harm threatening to happen.").
[22] *Id.* at *22 (rejecting evidence Arizona legislature passed restrictive voting laws with racially discriminatory intent).
[23] *See, e.g., Abbott v. Perez*, 138 S. Ct. 2305, 2326 n.18 (2018).

suits by relying on racially discriminatory *intent* of a state legislature in passing restrictive voting rules.[24]

Congress should reverse this statutory decision through carefully-crafted legislation, just as Congress has done in the past, approving Voting Rights Act renewals and extensions by broad bipartisan majorities.[25] Any new legislation will have to consider the scope of Congress's power under Article I, Section 4's "elections clause" to "make or alter" state rules regarding federal elections, as well as Congress's power to pass voting legislation affecting federal, state, and local elections under its power to enforce the voting amendments, including the Fourteenth, Fifteenth, Nineteenth, Twenty-Fourth, and Twenty-Sixth Amendments.[26] It also will have to consider that part of *Brnovich* in which the Court wrote that the dissent's disparate impact test for finding Section 2 violations in vote denial cases might "deprive the States of their authority to establish non-discriminatory voting rules."[27] This statement appears like a threat to find new congressional voting rights legislation unconstitutional.

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[24] *See generally* Richard L. Hasen, *The Supreme Court's Pro-Partisanship Turn*, 109 GEO. L.J. ONLINE 50 (2020), *available at*: https://www.law.georgetown.edu/georgetown-law-journal/wp-content/uploads/sites/26/2020/07/Hasen-The-Supreme-Court%E2%80%99s-Pro-Partisanship-Turn.pdf.

[25] The Senate approved the most recent 2006 VRA amendments by a vote of 98-0. Carl Hulse, *By a Vote of 98-0, Senate Approves 25-Year Extension of Voting Rights Act*, N.Y. TIMES, July 21, 2006, https://www.nytimes.com/2006/07/21/washington/21vote.html.

[26] *Shelby County v. Holder*, 570 U.S. at 567 n.2 (Ginsburg, J., dissenting) ("The Constitution uses the words 'right to vote' in five separate places: the Fourteenth, Fifteenth, Nineteenth, Twenty–Fourth, and Twenty–Sixth Amendments. Each of these Amendments contains the same broad empowerment of Congress to enact 'appropriate legislation' to enforce the protected right. The implication is unmistakable: Under our constitutional structure, Congress holds the lead rein in making the right to vote equally real for all U.S. citizens. These Amendments are in line with the special role assigned to Congress in protecting the integrity of the democratic process in federal elections."); *see generally* Richard L. Hasen & Leah M. Litman, *Thin and Thick Conceptions of the Nineteenth Amendment Right to Vote and Congress's Power to Enforce It*, 108 GEO. L.J. 19TH AMENDMENT ED. 27 (2020), *available at*: https://www.law.georgetown.edu/georgetown-law-journal/wp-content/uploads/sites/26/2020/07/Thin-and-Thick-Conceptions-of-the-Nineteenth-Amendment-Right-to-Vote-and-Congress%E2%80%99s-Power-to-Enforce-It.pdf.

[27] *Brnovich,* 2021 WL 2690267, at *18; *see generally* Richard L. Hasen, *The Supreme Court Is Putting Democracy at Risk*, N.Y. TIMES, July 1, 2021, at A1, *available at*: https://www.nytimes.com/2021/07/01/opinion/supreme-court-rulings-arizona-california.html (raising constitutional concern).

If Congress considers rules to restore either Section 2 or Section 5 of the Voting Rights Act, it will have to offer record evidence showing constitutional voting rights violations within the states, and the need for congruent and proportional legislation to deal with the scope of the constitutional violations.[28]

Thank you for the opportunity to present these views. I welcome your questions.

[28] I offered the same advice when I testified before the Senate Judiciary Committee in 2006 on the renewal of the Voting Rights Act, warning that without changing the coverage formula in Section 4, the Supreme Court could well strike down the preclearance provisions of the Voting Rights Act as exceeding Congressional power (as the Court did seven years later in *Shelby County* after Congress failed to rewrite the coverage formula). *See An Introduction to the Expiring Provisions of the Voting Rights Act and Legal Issues Relating to Reauthorization: Hearing Before the S. Comm. on the Judiciary*, 109th Cong. (2006) (Statement of Richard L. Hasen), *available at*: https://electionlawblog.org/archives/hasen-testimony-final.pdf.



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"Restoring the Voting Rights Act after *Brnovich* and *Shelby County*"

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Good morning, Chair Blumenthal, Ranking Member Cruz, and members of the Subcommittee. My name is Janai Nelson, and I am the Associate Director Counsel at the NAACP Legal Defense and Educational Fund, Inc. ("LDF"). Thank you for the opportunity to testify this morning on some of LDF's efforts to protect and defend the voting rights of Black Americans through litigation and other forms of advocacy, to share some of what we have observed with regard to the proliferation of barriers to voting since the U.S. Supreme Court's decision in *Shelby County, Alabama v. Holder* in 2013, and to discuss the urgent need to restore the Voting Rights Act to its full strength after both *Shelby* and the recent decision in *Brnovich v. Democratic National Committee.*[1]

Since its founding in 1940 by Thurgood Marshall, LDF has been a leader in the fight to secure, protect, and advance the voting rights of Black voters and other communities of color. LDF was launched at a time when the nation's aspirations for equality and due process of law were stifled by widespread state-sponsored racial inequality in every area of life. Through litigation, public policy, and public education, LDF's mission has remained focused on seeking structural changes to expand democracy, eliminate disparities, and achieve racial justice in a society that fulfills the promise of equality for all Americans. In advancing that mission, protecting the right to vote for African Americans has been positioned at the epicenter of our work. Beginning with *Smith v. Allwright*,[2] 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 civic and political 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*,[3] which set in motion the end of legal segregation in this country and transformed the direction of American democracy in the 20th century—referred to *Smith v. Allwright*, the case that outlawed all-white primaries, as his most consequential case. He held this view, he explained, because he believed that the vote, and the opportunity to access political power, was critical to fulfilling the guarantee of full citizenship promised to Black people in the 14th Amendment to the U.S. Constitution. LDF has prioritized its work protecting the right of Black citizens to vote for over 80 years—representing Martin Luther King Jr. and the marchers in Selma, Alabama in 1965, litigating seminal cases interpreting the scope of the Voting Rights Act, and working in communities across the South to strengthen and protect

[1] 570 U.S. 529 (2013); 594 U.S. ___ (2021).
[2] 321 U.S. 629 (1994).
[3] 347 U.S. 483 (1954).

the ability of Black citizens to participate in the political process free from discrimination.

Despite the guarantees of the 14th and 15th Amendments, the Voting Rights Act ("VRA"), and other federal voting rights statutes, racial discrimination and targeted suppression of the Black vote persists, and the need for litigation by LDF and other civil rights organizations to defend against these attacks on the fundamental right to vote has not abated. Indeed, in the years since the infamous 2013 Supreme Court decision in *Shelby County, Alabama, v. Holder*,[4] 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 the 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. In that decision, Chief Justice John Roberts invited Congress to update the Voting Rights Act to respond to modern conditions. In the eight years since *Shelby* was decided, however, Congress has failed to act upon the Court's invitation to update the Voting Rights Act, leaving voters of color—and our democracy—unprotected. Now, the Supreme Court's decision in *Brnovich* misinterpreting and weakening Section 2 of the Voting Rights Act, threatens to embolden states and jurisdictions to unleash a torrent of new voting restrictions that burden Black voters' ability to participate equally in the political process. This latest decision of the Court underscores the urgent need for Congress to take action to restore the Voting Rights Act in unequivocal terms and to do so swiftly.

Significance of the Voting Rights Act

The end of the Civil War has been described as this nation's "Second Founding."[5] It was then that the United States undertook efforts to amend our Constitution to provide Congress with substantial, affirmative power to finally enforce the principle espoused by the Founders, that *all* are created equal, and that access to the franchise is the cornerstone of citizenship and democracy. Importantly, the 14th and 15th Amendments to the Constitution also provided new, specific

[4] 570 U.S. 529 (2013).
[5] *See generally* Eric Foner, *The Second Founding: How the Civil War and Reconstruction Remade the Constitution* (2019)

authority for Congress to defend equal rights, stating that Congress *shall* have power to enforce the Amendments through appropriate legislation.[6]

The Civil Rights Amendments give Congress the explicit power to enforce the guarantee of equal protection and protection against voting discrimination based on race. Yet the collective promise of equality for Black Americans was blatantly obstructed for nearly 100 years after the ratification of those Amendments. During that period, states and municipalities throughout the country "resort[ed] to facially neutral tests that took advantage of differing social conditions"[7] between Black and white voters to create discriminatory voting policies. Black people were systematically disenfranchised by poll taxes,[8] literacy tests,[9] property requirements,[10] threats,[11] and lynching.[12] Practices like literacy tests, while facially neutral, relied on the reality of private and state-sponsored discrimination to successfully interfere with, prohibit, and discourage Black voters' from exercising their constitutional right to vote.

For nearly a century, Congress abdicated its obligation to use its enforcement powers despite persistent and egregious voting discrimination by federal, state, and local governments against Black people. And the Supreme Court often proved a hostile forum for civil rights plaintiffs.[13] Post-Reconstruction, state and private actors subjected Black Americans to racial violence and flagrant discrimination in all areas of life, including education, employment, healthcare, housing, and transportation, which increased the suppressive force of many voting policies, whose very success was premised on the existence of racial discrimination in other aspects of social,

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[6] U.S. Const. amend. XIII, § 2 ("Congress shall have power to enforce this article by appropriate legislation."); U.S. Const. amend. XIV, § 5 ("The Congress shall have power to enforce, by appropriate legislation, the provisions of this article."); U.S. Const. amend. XV, § 2 ("The Congress shall have the power to enforce this article by appropriate legislation.").

[7] *Underwood*, 730 F.2d at 619 & n.10.

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

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

[10] *Id.*

[11] Michael Fellman, *In the Name of God and Country: Reconsidering Terrorism in American History* (New Haven, CT: Yale University Press, 2010); U.S. Commission on Civil Rights, *Racial and Ethnic Tensions in American Communities: Poverty, Inequality, and Discrimination—Volume VII: The Mississippi Delta Report: Chapter 3, Voting Rights and Political Representation in the Mississippi Delta* (last accessed June 21, 2021), https://www.usccr.gov/pubs/msdelta/ch3.htm.

[12] Brad Epperly, et al., *Rule by Violence, Rule by Law: The Evolution of Voter Suppression and Lynching in the U.S. South*, (Mar. 1, 2016), https://ssrn.com/abstract=3224412

[13] *See, e.g.*, *Civil Rights Cases*, 109 U.S. 3 (1883); *Plessy v. Ferguson*, 163 U.S. 537 (1896); *Giles v. Harris*, 189 U.S. 475 (1903); *Grovey v. Townsend*, 295 U.S. 45 (1935).

economic, and political life.[14] During this period, in the memorable words of W.E.B. Du Bois, "Democracy died save in the hearts of black folk."[15]

Congress finally took up its charge by passing the Voting Rights Act of 1965 ("VRA"), compelled by the Civil Rights Movement generally, and the violent events of Bloody Sunday in Selma, Alabama, specifically. The VRA fulfilled the promise of the 15th Amendment that the right to vote should not be denied because of race, color or previous condition of servitude, as well as the 14th Amendment's guarantee of equal protection under the law. Its purpose was ambitious but clear: to finally "banish the blight of racial discrimination in voting."[16] The VRA enshrined our most fundamental values by guaranteeing to all citizens the right to vote, which the Supreme Court has called "preservative of all rights."[17] In many ways, the VRA made the promise of the Civil Rights Amendments a reality and legitimized our democracy for the first time in our history.[18] Among the most transformative of the civil rights statutes passed in the 1960s,[19] the Voting Rights Act has been justly described as "the crown jewel" of the Civil Rights Movement.

The success of the VRA is largely predicated on the purposeful, precise yet necessarily expansive nature of its provisions. The VRA's preclearance provisions brought profound changes to the country and was successful at dismantling the continuation of Jim Crow subjugation in the electoral arena specifically because of its prophylactic design. Previously, when the Department of Justice obtained favorable decisions striking down suppressive voting practices, states merely enacted new discriminatory schemes to restrict Black people from voting. In establishing the preclearance framework of the VRA, Congress, therefore, "had reason to suppose that these States might try similar maneuvers in the future in order to evade the remedies for voting discrimination contained in the [Voting Rights Act] itself."[20] Section 5 of

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[14] *See, e.g.*, *South Carolina v. Katzenbach*, 383 U.S. 301, 310–11 & nn.9–10 (1966) (observing that the effectiveness of literacy tests at blocking Black Americans from voting resulted, in significant part, from the pervasiveness of racial discrimination in education); *Underwood v. Hunter*, 730 F.2d 614, 619 & n.10 (11th Cir. 1984) (explaining that, after 1890, Southern state legislatures "resort[ed] to facially neutral tests that took advantage of differing social conditions" between Black and white voters").

[15] W. E. Burghardt Du Bois, *Black Reconstruction in America: An Essay Toward a History of the Part Which Black Folk Played in the Attempt To Reconstruct Democracy in America, 1860–1880* 30 (1935).

[16] *Katzenbach*, 383 U.S. at 308.

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

[18] Nikole Hannah Jones, *Our democracy's founding ideals were false when they were written. Black Americans have fought to make them true*, New York Times Magazine (Aug. 14, 2019), https://www.nytimes.com/interactive/2019/08/14/magazine/black-history-americandemocracy.html

[19] *See Nw. Austin, Mun. Util. Dist. No. One v. Holder*, 557 U.S. 193, 198, 201 (2009) (the "historic accomplishments of the [VRA] are undeniable").

[20] *South Carolina v. Katzenbach*, 383 U.S. 301, 314, 335 (1966). As Chief Justice Earl Warren

the VRA was expressly designed to address not only then-existing discriminatory voting schemes but also to address the "ingenious methods"[21] that might be devised and used in the future to suppress the full voting strength of African Americans. Section 5 preclearance was an efficient, effective, and *necessary* mechanism for detecting and redressing the many forms of voting discrimination *before* elections took place.

Additionally, Section 2 of the VRA provided litigants with the tools to challenge voting laws or policies which resulted in vote dilution or vote denial "on account of race or color." In the years after the VRA's initial passage in 1965, litigants used Section 2 to challenge restrictive voting rules that were already in place and therefore were not subject to the preclearance process. In 1980, foreshadowing the present moment, the Supreme Court eroded a decades-old understanding of Section 2's protections, holding that such challenges required proof of intentional discrimination.[22] In 1982, Congress corrected the Supreme Court's interpretation by amending Section 2 such that a violation was established when, seen in the "totality of the circumstance of the local electoral process," the challenged standard, law, practice, or procedure had the result of denying a racial or language minority an equal opportunity to participate in the political process.[23] Critically, among the factors considered by Congress in the totality of the circumstances were socioeconomic disparities that could make historically disenfranchised racial groups face extra barriers to voting.[24]

In amending Section 2, Congress took specific issue with the supposedly neutral justifications states had previously advanced for passing restrictive voting rules. Congress found that "even if state actors had purposefully discriminated, they would likely be "ab[le] to offer a non-racial rationalization," supported by "a false trail" of "official resolutions" and "other legislative history eschewing any racial motive."[25] Thus, Congress determined that only a results-focused statute could prevent states from finding ways to abridge minority citizens' voting rights. Congress' 1982 amendment was textually clear and precise. Section 2's results test created a broad statute meant to supersede the "intent" requirement that the Court had grafted on to Section 2 prior to the 1982 amendments, thus expanding the reach of Section 2.

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explained: "Congress concluded that the unsuccessful remedies which it had prescribed in the past would have to be replaced by sterner and more elaborate measures." *Id.* at 30.

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

[22] *Mobile v. Bolden*, 446 U.S. 55 (1980).

[23] *See* 52 U.S.C. § 10301.

[24] S.Rep. No. 97-417, 97th Cong., 2d Sess. (1982) at 28-29.

[25] *Id.* at 36.

Section 2 broadly "prohibits all forms of voting discrimination."[26] The plain statutory text prohibits "any 'standard, practice, or procedure' that 'results in a denial or abridgment'"[27] of the right to vote on account of race. Section 2 thus "covers every application of a qualification, standard, practice, or procedure that results in a denial or abridgment of 'the right' to vote."[28]

The *Shelby* and *Brnovich* Decisions

Unfortunately, the Supreme Court's decision in *Shelby* brought an abrupt halt to the successes of the VRA's preclearance provisions, and now its *Brnovich* decision threatens the efficacy of the VRA's Section 2.

In *Shelby*, the Supreme Court rendered preclearance inoperative, making Section 5 of the VRA unenforceable until Congress enacts a new coverage provision to identify the covered jurisdictions. As the late Justice Ruth Bader Ginsberg noted in her dissent to the *Shelby* decision: "Throwing out preclearance when it has worked and is continuing to work to stop discriminatory changes is like throwing away your umbrella in a rainstorm because you are not getting wet."[29] The *Shelby* decision allowed state and local governments to unleash discriminatory voter suppression schemes virtually unchecked.[30] At its pre-*Shelby* strength, Section 5 would have prevented many of the voter suppression schemes that we have encountered since 2013. Indeed, as Justice Kagan notes in her *Brnovich* dissent "the problem of voting discrimination has become worse . . . in part because of what this Court did in *Shelby County*."[31]

Just eight years ago in *Shelby*, the Court explicitly stated that its decision "in no way affect[ed] the permanent, nationwide ban on racial discrimination in voting found in [Section] 2."[32] Indeed, the Court emphasized in the *Shelby* decision that "Section 2 is permanent, applies nationwide," and broadly "forbids any 'standard, practice, or procedure' that 'results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color.'"[33] Yet days ago, in its *Brnovich* decision, the Supreme Court manufactured a counter-factual set of

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[26] *Thornburg v. Gingles*, 478 U.S. 45 n.10 (1986). *See also Johnson v. DeGrandy*, 512 U.S. 997 (1994).
[27] Section 2 text
[28] *Chisom* 501 U.S. 380 (1991) at 397.
[29] *Shelby Cnty*, 570 U.S. at 590 (Ginsburg, J., dissenting).
[30] U.S. Commission on Civil Rights, *An Assessment of Minority Voting Rights Access in the United States: 2018 Statutory Report* (2018), https://www.uscer.gov/pubs/2018/Minority_Voting_Access_2018.pdf.
[31] *Brnovich v. Democratic National Committee*, 594 U.S. ___, ___ (2021), No. 19–1257, slip op. at 13 (U.S. July 1, 2021).
[32] *Shelby Cnty*, 570 U.S at 557.
[33] *Id.* at 536–37 (quoting 52 U.S.C. § 10301(a)).

"guideposts" to govern Section 2 claims in order to weaken Section 2 and in complete disregard of the statutory text.

In *Brnovich*, the Court's majority relied on five invented factors—or "guideposts," in Justice Alito's terminology—to uphold a pair of Arizona laws that the *en banc* Ninth Circuit had found discriminatory in violation of Section 2.[34] The decision improperly and illogically departs from the plain text of Section 2, ignores settled precedent, and curtails the broad application of Section 2 that Congress intended, thus making it more difficult and burdensome to ensure that every eligible citizen is able to freely exercise their right to vote. By design, Section 2's language is sweeping in scope—as Justice Kagan explained, "to read it fairly . . . is to read it broadly. And to read it broadly is to do much that the majority is determined to avoid."[35] The majority ignored the statutory text of Section 2 and discounted language in the VRA requiring that voters have an equal opportunity to vote in favor of its erroneous conclusion that, so long as the process of voting is sufficiently "open" to all voters within the context of a State's entire system of voting, a discriminatory voting change does not violate Section 2. As Justice Kagan poignantly notes, this interpretation of Section 2 has no textual basis and contravenes the will of this body and the precedent of the Court:

> The Court always says that it must interpret a statute according to its text—that it has no warrant to override congressional choices. But the majority today flouts those choices with abandon. The language of Section 2 is as broad as broad can be. It applies to any policy that "results in" disparate voting opportunities for minority citizens. It prohibits, without any need to show bad motive, even facially neutral laws that make voting harder for members of one race than of another, given their differing life circumstances. That is the expansive statute Congress wrote, and that our prior decisions have recognized. But the majority today lessens the law—cuts Section 2 down to its own preferred size. The majority creates a set of extra-textual exceptions and considerations to sap the Act's strength, and to save laws like Arizona's. No matter what Congress wanted, the majority has other ideas. This Court has no right to remake Section 2.[36]

The majority claims to recognize that the VRA "applies to a broad range of voting rules, practices and procedures," and "does not require proof of discriminatory

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[34] *Brnovich*, 594 U.S. at __, slip op. at 13 (opinion of the Court).
[35] *Id.* at 41 (Kagan, J., dissenting).
[36] *Id.* at 40–41.

purpose," but does so in word only. In substance, the majority's decision disregards these purposes and erects an indefensible barrier for VRA plaintiffs because it believes that Congress should not have used its enforcement power to legislate broadly to protect the fundamental right to vote from racial discrimination. In other words, six Justices of the Supreme Court attempted to rewrite Section 2 of the VRA because they took issue with the nature of a constitutional bill passed by Congress upheld by multiple federal courts over the course of the 56 years since its passage, and relied upon by countless voters of color, to protect their right to vote. In our constitutional structure, the legislative function belongs to Congress. The Supreme Court's role, by contrast, is to interpret and apply a statute enacted by Congress as it is written, not to arbitrarily—or, worse, surgically—undermine and redraft the Congress's work.

Discounting the statute's actual text, as well as several of the Senate Factors that have guided Section 2 litigation for decades, the majority based its analysis on five factors or "guideposts" that it described as non-exhaustive but "important circumstances" for courts to consider when confronted with a Section 2 vote-denial claim.[37] These guideposts, as Justice Kagan's dissent makes plain, are in fact "a list of mostly made-up factors, at odds with Section 2 itself."[38] They "mostly inhabit[] a law-free zone"[39] and are unmoored from both text and truth. Not surprisingly, the majority opinion's guideposts "all cut in one direction—toward limiting liability for race-based voting inequalities" and shielding discriminatory laws from Section 2 challenges.[40]

One of the Court's newly created guideposts under Section 2 specifically instructs courts to compare the challenged voting restrictions to the burdens of voting as they existed in 1982, when Section 2 was amended by Congress to reach "results". This "guidepost" contravenes the text and purpose of Section 2 which is to prohibit racial discrimination in voting—defined as unequal opportunity between present-day racial groups to elect candidates of their choice—not to impose 1982 as a reference point for evaluating whether today's laws are discriminatory. As Justice Kagan observes, "Section 2 was meant to disrupt the status quo, not to preserve it—

[37] *Id.* at 16 (opinion of the Court).
[38] *Id.* at 20 (Kagan, J., dissenting).
[39] *Id.*

to eradicate then-current discriminatory practices, not to set them in amber."[41] The majority's guidepost, has no basis in the text or purpose of Section 2.[42]

Another "guidepost" enumerated in the *Brnovich* decision suggests that states may erect roadblocks and obstacles to voting that disproportionately harm historically disenfranchised racial groups and engage in voter suppression so long as that state has raised a theoretically legitimate—albeit unsubstantiated—interest, such as abstract concerns about potential for fraud. This guidepost threatens to restore our nation to the time before the Voting Rights Act's enactment, when states adopted facially neutral voting laws under the pretense of "purity of the ballot" but with the intent of excluding Black voters from the political process. This guidepost, too, finds no support in the VRA's text and, what's more, has no basis in the factual record to support the majority's conclusion. Indeed, the majority decision repeatedly refers to a supposed risk of voter fraud, even though Arizona could not point to any fraud to justify its challenged laws.[43] This guidepost, thus, rests on phantom fears about voter fraud, a phenomenon that is almost nonexistent, as a court-endorsed basis for restrictive voting legislation and stands in stark contrast to the reality that voter fraud is virtually non-existent. A study of the 834 million ballots cast in the elections between 2000 and 2014 found only 35 credible allegations of in-person voter fraud.[44] By contrast, there are voluminous examples of persistent and proliferating racial discrimination in voting during the same time period.[45] While the Fifteenth

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[41] *Id.* at 25 (Kagan, J., dissenting).

[42] Nicholas Stephanopoulos, *The Supreme Court showcased its 'textualist' double standard on voting rights*, The Washington Post (July 1, 2021), https://www.washingtonpost.com/opinions/2021/07/01/supreme-court-alito-voting-rights-act/; David Gans, *Selective originalism and selective textualism: How the Roberts court decimated the Voting Rights Act*, SCOTUSBlog (July 7, 2021), https://www.scotusblog.com/2021/07/selective-originalism-and-selective-textualism-how-the-roberts-court-decimated-the-voting-rights-act/.

[43] Richard Hansen, *The Supreme Court's Latest Voting Rights Opinion Is Even Worse Than It Seems*, Slate (July 8, 2021), https://slate.com/news-and-politics/2021/07/supreme-court-sam-alito-brnovich-angry.html?via=rss.

[44] German Lopez, *The case against voter ID laws, in one chart*, Vox.com (August 6, 2015), https://www.vox.com/2015/8/6/9107927/voter-id-election-fraud; *See also,* Quinn Scanlan, *'We've never found systemic fraud, not enough to overturn the election': Georgia Secretary of State Raffensperger says*, ABC News (Dec. 6, 2020), https://abcnews.go.com/Politics/weve-found-systemic-fraud-overturn-election-georgia-secretary/story?id=74560956; *Debunking the Voter Fraud Myth*, Brennan Center for Justice (Jan. 31, 2017), https://www.brennancenter.org/sites/default/files/analysis/Briefing_Memo_Debunking_Voter_Fraud_Myth.pdf.

[45] J. Morgan Kousser, *Facts of Voting Rights* 3 (cataloguing currently 4,173 "voting rights events" after 1982, including many after 200); H. R. Rep. No. 109-478, at 40–43 (2006) (reciting numerous Department of Justice objections to proposed voting laws under Section 5 in the relevant time period, as well as several voting laws that were withdrawn or amended voting changes were withdrawn or amended after the DOJ requested more information); U.S. Commission on Civil Rights, *An Assessment*

Amendment and the Voting Rights Act clearly demand the eradication of racial discrimination in voting as a national imperative,[46] the majority's opinion sends a false message that voter fraud, not racial discrimination, is the real threat to our system of democracy, and that Black voters' rights must yield if they conflict with state "fraud-prevention" measures. . But this is simply untrue as a matter of law. Under our Constitutional structure, "the Fifteenth Amendment supersedes contrary exertions of state power."[47]In short, the *Brnovich* decision is antithetical to the core constitutional principles of equality and anti-discrimination and is a major departure from nearly four decades of interpretation and analysis of Section 2 of the Voting Rights Act consistent with those principles.

Current Landscape of Voting Rights

Our nation is at a critical juncture in the decades-long struggle to create, maintain, preserve, and ensure true equality of voting rights for all citizens. For the first time in more than half a century, we enter a redistricting cycle without the protection of preclearance under Section 5 of the Voting Rights Act. At the same time, voter suppression is intensifying at the local and state levels and the right to vote for Black people and other people of color is facing its greatest threat in decades, now with an exceedingly high bar to challenge voting laws under Section 2 if the *Brnovich* majority's suggested guideposts are applied.

2020 was an unprecedented year in many respects and revealed the ongoing and urgent need for robust protections for voting rights. With the COVID-19 pandemic, the country faced not only a public health crisis, but also a threat to the very foundation of our democracy: free and fair elections. The staggering rate of transmission, infection, and death related to COVID-19 placed many voters in the unthinkable position of choosing to risk their health or lose their fundamental right as citizens to participate and vote. Voters across the country were forced to make a

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of Minority Voting Rights Access in the United States 226 (Sept. 12, 2018), https://www.usccr.gov/pubs/2018/Minority_Voting_Access_2018.pdf (identifying successful Section 2clitigation between the 2006 reauthorization and the *Shelby* decision in 2013); *see generally* Ellen D. Katz et al, *,Documenting Discrimination in Voting: Judicial Findings Under Section 2 of the Voting Rights Act Since 1982*, 39 U. Mich. J. L. Reform 643 (2006).

[46] U.S. Const. amend. XV; 52 U.S.C. § 10301; *Katzenbach*, 383 U.S. at 308 ("The Voting Rights Act was designed by Congress to banish the blight of racial discrimination in voting, which has infected the electoral process in parts of our country for nearly a century").

[47]*Katzenbach*, 383 U.S. at 325; *see Gomillion v. Lightfoot*, 364 U.S. 339, 347 (1960) ("When a State exercises power wholly within the domain of state interest, it is insulated from federal judicial review. But such insulation is not carried over when state power is used as an instrument for circumventing a federally protected right.").

life-risking choice to participate in elections because their state and local governments did not adequately protect them by providing safe opportunities to vote.[48]

Moreover, the wave of voter suppression laws that were implemented over the last year demonstrate that we must fight voter suppression from the stages of registration and participation in primaries to the counting and canvassing of ballots. Indeed, in the 2020 Elections, efforts at voter suppression continued beyond Election Day: stoked and encouraged by the former President, misguided individuals across the country participated in a dangerous campaign to disrupt the counting and certification of the presidential election and ultimately to overturn its results.[49]

Accounts from LDF's Voting Rights Defender and Prepared to Vote teams, detailed in the LDF Thurgood Marshall Institute's report *Democracy Defended*,[50] reveal the depth and breadth of the issues voters faced on and following Election day. In sum, the 2020 election did not, as numerous news reports suggested, "go smoothly."[51] The celebrated turnout and registration rates among Black voters occurred despite a litany of unequal obstacles and because of the Herculean efforts by civil-rights groups, organizers, and activists and the sheer determination and resilience of Black Voters. This model is not sustainable. Nor is it acceptable or lawful. Black voters' ability to overcome unequal burdens does not diminish the fact that those burdens exist. And, our Constitution does not countenance twosystems of

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

[49] Simon Romero, Shaila Dewan & Giulia McDonnell Nieto del Rio, *In a Year of Protest Cries, Now It's 'Count Every Vote!' and 'Stop the Steal!'*, New York Times (Nov. 5, 2020), https://www.nytimes.com/2020/11/05/us/electionprotests-vote-count.html; Bill Bostock, *Videos show Trump protesters chanting 'count those votes' and 'stop the count' outside separate ballot-counting sites in Arizona and Michigan*, Business Insider (Nov. 5, 2020), https://www.businessinsider.com/videos-trump-protesters-michigan-arizona-vote-count-2020-11; Jake Lahut, *Dozens of pro-Trump protesters chant 'Fox News sucks' outside major election HQ in Arizona, with several reportedly trying to get inside as votes are being counted*, Business Insider (Nov. 4, 2020), https://www.businessinsider.com/video-fox-news-sucks-chant-crowd-outside-maricopa-election-arizona-2020- 11?r=US&IR=T; Maura Ewing et al., *Two charged with carrying weapons near Philadelphia vote-counting site amid election tensions*, Washington Post (Nov. 6, 2020), https://www.washingtonpost.com/nation/2020/11/06/philadelphiaattack-plot-vote-count-election/.

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

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

voting in this country—one in which Black and other marginalized voters require an independent, non-governmental apparatus to exercise the fundamental right to vote while white voters do not.

Since the Supreme Court's *Shelby* decision, states and localities have unleashed countless schemes that seek to deny or abridge the rights of voters of color. Indeed, every year since 2013, communities of color throughout our country have sought to vote and participate equally and meaningfully in the political process without the core protections of the Voting Rights Act. And every year since the *Shelby* decision, restrictive and suppressive voting changes are implemented that would have been blocked by Section 5. Numerous reports[52] have catalogued these suppressive practices—including strict voter identification laws, unfair purging, cuts to early voting, and eliminating polling places—utilized in many states and jurisdictions throughout the country.

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

LDF is also a founding member of the non-partisan civil rights Election Protection Hotline (1-866-OUR-VOTE), administered by the Lawyers' Committee for Civil Rights Under Law. The Election Protection hotline coalition works year-round

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[52] In 2014, the Lawyer's Committee organized the National Commission on Voting Rights which issued a report documenting ongoing voting discrimination. National Commission on Voting Rights, *Protecting Minority Voters: Our Work Is Not Done* (2014), http://votingrightstoday.org/ncvr/resources/discriminationreport; In 2016, the Leadership Conference on Civil and Human Rights released a report before the first presidential election conducted without the full safeguards of the VRA detailing polling place reductions on a massive scale in many of the jurisdictions that were once protected by Section 5 of the VRA. The Leadership Conference Education Fund, *The Great Closure Report*, Civilrights.org, (Nov. 2016) http://civilrightsdocs.info/pdf/reports/2016/poll-closure-report-web.pdf; In 2018 the Leadership Conference published a report finding 1,688 polling place closures between 2012 and 2018, almost double the 868 closures found in their 2016 report. The Leadership Conference Education Fund, *Democracy Diverted: Polling Place Closures and the Right to Vote*, (Sep. 2019) democracydiverted.org; Leading up to the 2018 midterm elections the United States Commission on Civil Rights presented a report to the 116th Congress with urgent recommendations regarding the protection of voting rights across the nation. U.S. Commission on Civil Rights, *U.S. Commission on Civil Rights Urges Congress to Prioritize Civil Rights Oversight and Legislation*, Dec. 7, 2018, https://www.usccr.gov/press/2018/12-07-Priorities-for-116th-Congress.pdf; The Election Protection Coalition amassed extensive data evidencing systemic barriers faced by voters in Georgia, Texas, Florida and North Dakota. Laura Grace & Morgan Conley, *Election Protection 2018 Midterm Elections Preliminary Report*, (2018) https://866ourvote.org/wp-content/uploads/2019/01/Election-Protection-Preliminary-Report-on-the-2018-MidtermElections.pdf.

to ensure that all citizens have an equal opportunity to vote and have that vote count. Election Protection provides Americans from coast to coast with comprehensive information and assistance at all stages of voting—from registration to absentee and early voting, to casting a vote at the polls, and overcoming obstacles to their participation.

Accordingly, our PTV initiative equips voters with non-partisan educational information about how to comply with confusing, onerous, or newly changed election laws, including burdensome registration requirements, stringent voter ID laws, and strict absentee qualifications. On election day, PTV volunteers visit polling sites to ensure voters are informed of their state's voting requirements, answer questions about how to comply with election laws, and, when necessary, engage in rapid response actions to ensure every eligible voter is able to cast a ballot. PTV plays a critical role in tracking, monitoring, and reporting practices that make it harder for Black people and other people of color to exercise the fundamental right to vote. It is one of countless non-governmental efforts that work to ensure that Black and other marginalized voters have as close to an equal opportunity to vote and elect candidates of their choice as possible. But it is actually the responsibility of government to protect and defend the right to vote and we call on Congress to pass the necessary legislation create a more equal system of voting in this country.

It is against this backdrop, at this moment of crisis in American democracy, that six Supreme Court justices imposed new and additional burdens on voters seeking to vindicate their rights under Section 2, which have no support in the statute's text or history. To quote Justice Kagan:

> "The court decides this Voting Rights Act case at a perilous moment for the nation's commitment to equal citizenship. It decides this case in an era of voting-rights retrenchment – when too many states and localities are restricting access to voting in ways that will predictably deprive members of minority groups of equal access to the ballot box."

The extensive record of discriminatory voting practices enacted since *Shelby* demands that Congress fulfill its constitutional obligation to protect voters from an onslaught of new and "ingenious methods" of voter discrimination. If the Court is threatening to hold states to a standard from 1982, Congress needs to set a new standard in 2021. Congress can and must update the Voting Rights Act by passing new, clear and unequivocal mandates to protect the fundamental right to vote from racial discrimination and anti-democratic incursions.

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

Through its report, titled "Democracy Diminished: State and Local Threats to Voting post-*Shelby County, Alabama v. Holder*," LDF tracks, monitors, and publishes a record of discriminatory voting changes in jurisdictions formerly protected by Section 5.[53] *Democracy Diminished* details the many tactics that state and local policymakers have implemented with alarming speed since the *Shelby* decision, including barriers to voter registration, cuts to early voting, purges of the voter rolls, strict photo identification requirements, and last-minute polling place closures and consolidations. LDF also monitors and tracks incursions on the right to vote and is often compelled to bring litigation to defend and protect the rights of Black and other marginalized voters. This obligation has increased since the Supreme Court rendered Section 5 inoperable.

Without the protection of Section 5 of the Voting Rights Act, voters have had to rely on case-by-case litigation under the Constitution, other provisions of the VRA, and other laws to help protect the right to vote. Among these remaining provisions, and absent Congress's restoration of Section 5, Section 2 of the Voting Rights Act has now become the primary statutory check on racial discrimination in voting. In fact, according to the U.S. Commission on Civil Rights, in the first five years following *Shelby*, an unprecedented sixty-one lawsuits were filed under Section 2 of the VRA.[54] Twenty-three of these cases were successful.[55] In other words, over those first five years alone, federal courts identified *twenty-three* voting laws or practices that "result[ed] in a denial or abridgement of the right . . . to vote on account of race or color."[56] By contrast, in the five years before *Shelby*, only five Section 2 cases were won.[57] This means that, after *Shelby*, the rate of successful Section 2 litigation quadrupled.[58] And these cases arose predominantly in jurisdictions formerly covered by Section 5.[59]

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[53] NAACP Legal Defense Fund, *Democracy Diminished*, LDF's Thurgood Marshall Institute, https://www.naacpldf.org/wp-content/uploads/Democracy-Diminished-State-and-Local-Threatsto-Voting-Post-Shelby-County-Alabama-v.-Holder.pdf

[54] U.S. Commission on Civil Rights, *An Assessment of Minority Voting Rights Access in the United States* 10 (Sept. 12, 2018), https://www.usccr.gov/pubs/2018/Minority_Voting_Access_2018.pdf.

[55] *Id.* at 22.

[56] 52 U.S.C. § 10301(a).

[57] U.S. Commission on Civil Rights, *supra* note 63, at 227.

[58] *Id.* at 234.

[59] *Id.* (In the five years after *Shelby*, "12 out of 21 (52.2 percent)" of successful Section 2 cases arose in formerly covered jurisdictions, compared to "two out of five (40 percent)" in the five years before *Shelby*).

Since the *Shelby* decision, federal courts have also struck down voting changes that violate the 14th and 15th Amendments to the U.S. Constitution,[60] the 24th Amendment to the U.S. Constitution,[61] Sections 2 and 203 of the Voting Rights Act, and the Americans with Disability Act. Indeed, there have been at least nine federal court decisions finding that states or localities enacted racially discriminatory voting laws or practices intentionally, for the purpose of discriminating against Black voters, Latino voters, or other voters of color.[62] That fact is alarming. In Texas, for example, a trial court held that the state enacted its strict voter ID law with the purpose of discriminating against Black and Latino voters.[63] In Wisconsin, a federal court struck down various voting restrictions under the Voting Rights Act, and found one, a limitation on hours for in-person absentee voting, based on intentional discrimination in violation of the Fifteenth Amendment.[64] And in North Carolina, the Fourth Circuit Court of Appeals found that the North Carolina legislature worked with "surgical provision" to ensure that its omnibus voting law would disproportionately disenfranchise African American voters.[65] These findings by federal courts are a shocking condemnation of our voting systems, and demonstrate what the unfettered post-*Shelby* world has wrought.

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[60] *4th Circuit Court of Appeals strikes down North Carolina omnibus voting law finding "provisions target African Americans with almost surgical precision."*, Robert Barnes & Ann Marrow, *Appeals court strikes down North Carolina's voter-ID law*, Washington Post (Jul. 29, 2016), https://www.washingtonpost.com/local/publicsafety/appeals-court-strikes-down-north-carolinas-voter-id-law/2016/07/29/810b5844-4f72-11e6-aa14- e0c1087f7583_story.html.

[61] *NAACP v. Billups*, 554 F.3d 1340 (2009)

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

[63] *Veasey v. Abbott*, No. 2:13-CV-193, 2017 WL 3620639 (S.D. Tex. Aug. 23, 2017).

[64] *One Wisconsin Inst., Inc. v. Thomsen*, 198 F. Supp. 3d 896 (W.D. Wis. 2016).

[65] *N.C .State Conf. of NAACP v. McCrory*, 831 F.3d 204, 214 (4th Cir. 2016).

LDF has litigated challenges to many of these restrictive voter ID laws in Texas[66] and Alabama,[67] absentee voting restrictions in Alabama,[68] Arkansas,[69] Louisiana,[70] South Carolina,[71] judicial redistricting schemes that deny Black voters an opportunity to participate in the political process on an equal basis and elect candidates of their choice,[72] and discriminatory early voting restrictions in Waller County, Texas. LDF challenged President Trump's Election Integrity Commission,[73] and currently remains in litigation against former President Trump and the Republican National Committee for their efforts to discredit the legitimacy of ballots cast by voters in cities with large Black populations.[74] LDF also sued the United States Postal Service ("USPS") in 2020 to ensure the timely delivery of mail-in ballots cast in the November Presidential election and January special election in Georgia.[75]

While LDF will continue to vigorously pursue litigation to protect voting rights under Section 2 of the VRA, the U.S. Constitution, and other laws, we know that even these robust efforts and those of our civil rights colleagues and the reinvigorated Department of Justice are not enough to fully protect the right to vote.[76] I have previously submitted written testimony before this Congress that summarizes

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[66] *Veasey v. Abbott*, 830 F.3d 216 (5th Cir. 2016) (en banc).
[67] *Greater Birmingham Ministries v. Merrill*, 284 F. Supp. 3d 1253 (N.D. Ala. 2018), *aff'd sub nom. Greater Birmingham Ministries v. Sec'y of State for Alabama*, 966 F.3d 1202 (11th Cir. 2020), *opinion vacated and superseded sub nom. Greater Birmingham Ministries v. Sec'y of State for State of Alabama*, 992 F.3d 1299 (11th Cir. 2021), and *aff'd sub nom. Greater Birmingham Ministries v. Sec'y of State for State of Alabama*, 992 F.3d 1299 (11th Cir. 2021).
[68] *People First of Alabama v. Merrill*, No. 2:20-cv-00619 (N.D. Ala. 2020).
[69] *Mays v. Thurston*, No. 4:20-cv-00341 (E.D. Ark. 2020).
[70] *Power Coalition for Equity and Justice v. Edwards*, No. 3:20-cv-00283 (M.D. La. 2020).
[71] *Thomas v. Andino*, 3:20-cv-01552 (D.S.C. 2020).
[72] *Fusilier v. Landry*, 963 F.3d 447 (5th Cir. 2020); *Christian Ministerial Alliance v. Hutchinson*, No. 4:19-cv-00402-JM (E.D. Ark. 2019).
[73] *LDF and Local Alabama Organization File Federal Lawsuit Challenging President's "Election Integrity" Commission*, NAACP Legal Defense and Educ. Fund, Inc. (Jul. 18, 2017), https://www.naacpldf.org/press-release/ldf-and-local-alabama-organization-file-federal-lawsuit-challenging-presidents-election-integrity-commission/.
[74] *LDF Files Amended Complaint in its Lawsuit Against President Trump and His Campaign's Attempts to Overturn the Election by Disenfranchising Black Voters*, NAACP Legal Defense and Educ. Fund, Inc. (Dec. 22, 2020), https://www.naacpldf.org/press-release/ldffiles-amended-complaint-in-its-lawsuit-against-president-trump-and-his-campaigns-attempts-to-overturn-theelection-by-disenfranchising-black-voters/.
[75] *NAACP v. U.S. Postal Service*, No 1:20-cv-02295 (D. D.C.2020).
[76] *The Cost (in Time, Money, and Burden) of Section 2 of the Voting Rights Act Litigation*, [76] NAACP Legal Defense and Educ. Fund, Inc. (Feb. 14, 2019), https://www.naacpldf.org/wp-content/uploads/Section-2-costs02.14.19.pdf; Federal Judicial Center, *2003-2004 District Court Case-Weighting Study*, Table 1 (2005) (finding that voting cases consume the sixth most judicial resources out of sixty-three types of cases analyzed); Voting Rights Act: Section 5 of the Act – History, Scope, and Purpose: Hearing Before the Subcomm. on the Constitution of the H. Comm. on the Judiciary, 109th Cong. 92 (2005) ("Two to five years is a rough average" for the length of Section 2 lawsuits) http://commdocs.house.gov/committees/judiciary/hju24120.000/hju24120_0.HTM.

selected litigation that LDF has brought post-*Shelby*, which is representative of the broad and persistent attack on voting rights that defines our national moment.[77]

Our experience litigating against discriminatory challenges to every stage of the voting process since *Shelby*, demonstrates that there are numerous methods of voter suppression that are effective and successful in their goal: to confuse, discourage, make burdensome, or deny the right to vote. The intimidation and disenfranchisement of Black voters has always been central to the American story and its underlying origins rooted in white supremacy. Indeed, the loathsome methods of voter suppression that we see today, are not dissimilar from the methods of the past in their intent or results. Much of what we see is a modernization of old tactics, a modernization of the poll tax and grandfather clauses. But we also see the same strategies used during the Jim Crow era—such as confusing and ever-changing registration requirements and discriminatory at-large election schemes. What is different from recent decades is that we are operating today without the protection of Section 5 of the VRA—and must now rely on a diminished Section 2—at great costs to our democracy. *Brnovich* has undoubtedly made it more challenging to litigate future challenges to voting rights. And, while litigation remains an essential tool in the fight to protect the integrity of our democracy, it is not sufficient. Affirmative, prophylactic legislation is essential.

Limits of Litigation

Voting rights litigation can be slow and expensive. The parties often spend millions litigating these cases.[78] The cases take up significant judicial resources.[79] And the average length of Section 2 cases is two to five years.[80] But, in the years during a case's pendency, thousands—and, in some cases, millions—of voters are effectively disenfranchised. For these reasons, the need for prophylactic legislation is both urgent and acute. Litigation is a blunt instrument. The beauty and innovative genius of Section 5 preclearance review was that it allowed federal authorities to stop

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[77] Written Testimony of Janai S. Nelson Before the United States House of Representatives Committee on House Administration. Subcommittee on Elections, "Voting in America: A National Perspective on the Right to Vote, Methods of Election, Jurisdictional Boundaries, and Redistricting" (June 24, 2021), https://docs.house.gov/meetings/HA/HA08/20210624/112806/HHRG-117-HA08-Wstate-NelsonJ-20210624.pdf.

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

[79] 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).

[80] 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).

voting discrimination *before* it inevitably harmed voters in a variety of federal, state, or local elections.

The *Brnovich* decision makes immediate congressional action to restore the Voting Rights Act to its full power and articulate in unambiguous terms the commitment to equality and anti-discrimination in voting all the more urgent. Since *Shelby* was decided in 2013, Section 2 has been our primary line of defense against the discriminatory denial or abridgement of the right to vote. In 2020, LDF filed five cases bringing Section 2 claims.[81] And, this year, in 2021, we have filed two more, challenging voter-suppression bills in Georgia and in Florida.[82] The United States Department of Justice and our colleagues at other civil-rights organizations are also actively litigating Section 2 cases in response to a renewed wave of harmful and discriminatory voting laws and practices.

As noted earlier, two weeks ago, six Supreme Court justices dealt a substantial blow to Section 2 and the democratic ideals it was designed to protect. By weakening Section 2 of the Voting Rights Act based on its own views of how much discrimination is acceptable, a majority of the Supreme Court has once again diminished our democracy. Again, the Court has devalued the storied and tragic history of sacrifice by Black Americans that led to the Act's passage, as well as the present assault on the citizenship and voting rights of people of color that make the VRA's intended protections—including Section 5 preclearance—so critical today.

Even before *Brnovich*, it was clear that case-by-case litigation under Section 2, the Constitution, and other laws would be no match for the national crisis our democracy now faces. Litigation is slow and costly—and court victories may come only after a voting law or practice has been in place for several election cycles. All the while, critical elections for the presidency, congress, state legislative seats, and scores of seats at the local levels have come and gone. Individual voting-rights lawsuits filed under Section 2 or other provisions, simply put, cannot substitute for the prophylactic power of Section 5 preclearance.

This year alone, at least seventeen states have rolled back early and mail voting, added new hurdles for voter registration, imposed burdensome and unnecessary voter identification requirements, stripped power from state and local

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[81] *Power Coalition for Equity and Justice v. Edwards*, No. 3:20-cv-00283 (M.D. La. 2020); *Harding v. Edwards*, 3:20-cv-00495 (M.D. La.); *Thomas v. Andino*, 3:20-cv-01552 (D.S.C. 2020); *People First of Alabama v. Merrill*, No. 2:20-cv-00619 (N.D. Ala. 2020); *Mays v. Thurston*, No. 4:20-cv-00341 (E.D. Ark. 2020).

[82] *Sixth District of the African Methodist Episcopal Church v. Kemp*, No. 1:21-cv-01284-JPB (N.D. Ga. 2021); *Florida State Conference of Branches and Youth Units of the NAACP v. Lee*, No. 4:21-cv-00187-WS-MAF (N.D. Fla. 2021).

election officials to enhance voting access, and taken other steps to make voting more difficult.[83] This recent wave of voter suppression bills would likely never have been introduced under preclearance. Indeed, the deterrent effect was Section 5's genius—it stopped discrimination before the harm occurred. We urgently need such prophylactic legislation now.

Need for Full Restoration and Enforcement of the Voting Rights Act

When Congress reauthorized the VRA in 2006, it legislated against the backdrop of an unbroken line of Supreme Court authority holding that the VRA's preclearance process was a constitutional means for the Congress to ensure the equal right to vote.[84] Despite the devastating effect of the Court's *Shelby* decision, the Court did not overrule the constitutionality of a measured and properly tailored preclearance provision—nor did it render other such remedies inherently unconstitutional. The Court in *Shelby* held that the VRA's preclearance coverage formula was unconstitutional because it had not been updated since the 1970s, and therefore was not based on "current conditions."[85] But the Court's opinion left opportunity for Congress to establish a new preclearance framework responsive to current conditions. Indeed, the Supreme Court found preclearance a "stringent" and "potent" measure, fully available to Congress to deploy as an "extraordinary" tool to confront racial discrimination in elections and voting systems.[86] And, as noted above, Chief Justice Roberts expressly invited Congress to establish such a framework.[87]

In the previous century, the Constitution was amended only twelve times—each time with careful, deliberate consideration. That a Constitutional Amendment was devoted solely to the prohibition of racial discrimination in voting—and that the Amendment expressly delegated enforcement powers to Congress—underscores the extraordinary harm of the denial to vote based on race.[88] Further, the Supreme Court has long recognized that the Fifteenth Amendment's prohibition on "sophisticated as well as simple-minded modes of discrimination"[89] endows Congress with extraordinary power to "use any rational means to effectuate the constitutional

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[83] Brennan Center for Justice, *Voting Laws Roundup: May 2021* (updated as of June 21, 2021), https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-may-2021.
[84] *See Lopez v. Monterey County*, 525 U.S. 266 (1999); *City of Rome v. United States*, 446 U.S. 156 (1980); *Georgia v. United States*, 411 U.S. 526 (1973); *South Carolina v. Katzenbach*, 383 U.S. 301 (1966).
[85] *Shelby County, Ala. v. Holder*, 570 U.S. 529, 554 (2013).
[86] *Id.* at 545-46.
[87] *Id.* at 557.
[88] U.S. Const. amend. XV; *see South Carolina v. Katzenbach*, 383 U.S. 301, 326 (1966) (holding that "Congress has full remedial powers to effectuate the constitutional prohibition against racial discrimination in voting"_.
[89] *Gomillion v. Lightfoot*, 364 U.S. 339, 342, (1960) (quoting *Lane v. Wilson*, 307 U.S. 268, 275 (1939)).

prohibition of racial discrimination in voting."[90] A legislative remedy such as an updated preclearance mechanism would, therefore, be justified as an exercise of this extraordinary power.

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

Without preclearance, Section 2 has borne a weight it was never intended to carry alone.[91] Despite "its sweep and power," as Justice Kagan's dissent reminds us, "Section 2 was supposed to be a back-up."[92]. Now more than ever, it is not only imperative that Congress restore the VRA, but also that Congress *strengthen* the VRA to better address the ingenious methods that are, and will be, used to suppress the full voting strength of African Americans and people of color.

The Need for Known Practices Coverage Protections

In addition to a preclearance requirement for states with a history of voting rights violations, a Known Practices Coverage ("KPC") preclearance framework is necessary to address specific forms of voting discrimination that continue to threaten rights of voters of color. KPC would require preclearance for any voting policies or practices that pose a significant potential for violations of voting rights as demonstrated by broad historical experience. For example, the creation of at-large seats, annexations of suburban populations, and redistricting completed by incumbents all raise concerns when they occur in a jurisdiction that has experienced recent, significant growth of a specific minority population. Importantly, a KPC framework would require federal preclearance of voting practices that are known to correlate with racial or language-based discrimination only in jurisdictions that have a significant racial or language minority citizen voting age population. KPC combines

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[90] *Katzenbach*, 383 U.S. at 324.
[91] *See Brnovich*, 594 U.S. at ___, slip op. at 11 (Kagan, J., dissenting).
[92] *Id.*

a demographic threshold with the prevalence of specific, known practices of voting rights discrimination.

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

Generational Obligation to Protect the Right to Vote

It is unacceptable that in 2021—56 years after the passage of the Voting Rights Act—the right to vote remains under threat. Yet today we see a repeat of history. Justice Ginsburg, in her *Shelby* dissent, compared efforts to combat voter suppression in the states as similar to "battling the Hydra."[93] According to Greek mythology, for every head cut off the Hydra, a mythical and monstrous creature, two more would grow in its place.[94] Preclearance was designed to address the Hydra problem—to eliminate adaptive, and unrelenting discriminatory voting practices.

Indeed, the Hydra problem is what we see unfolding in the states. Across the country, a resurgence of Jim Crow-style voter discrimination is targeting voters of color by restricting access to the ballot for Black, Latino, Asian American and Pacific Islander, and Native American communities. According to the Brennan Center, as of May 14th, state legislators have introduced over 389 bills with restrictive provisions in 48 states.[95] The states of Georgia, Florida, Iowa, Arkansas, and Utah have already passed strict voter suppression legislation and several others stand poised to do the same in the coming weeks.[96]

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

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[93] *Shelby County*, 570 U.S. at 560 (Ginsburg, J., dissenting).
[94] *Hydra: Greek Mythology*, Britannica.com (last accessed May 24, 2021), https://www.britannica.com/topic/Hydra-Greek-mythology.
[95] *State Voting Bills Tracker 2021*, Brennan Center for Justice (last updated May 28, 2021), https://www.brennancenter.org/our-work/research-reports/state-voting-bills-tracker-2021.
[96] *Voting Laws Roundup: March 2021*, Brennan Center for Justice (Apr. 1, 2021), https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-march-2021.

Brnovich threatens to tilt the scales yet again in favor of unlawful voter suppression, enabling an ongoing assault on our democracy and casting our nation back to a painful era of unequal citizenship. Damaging though it was, however, the majority's opinion in *Brnovich* never questioned Section 2's constitutionality or discounted Congress's power to enforce the Fifteenth Amendment by enacting a robust, nationwide ban on racial discrimination in voting. It is entirely within this Congress's power—no less today than it was in 1982—to reject the Supreme Court's latest misreading of Section 2.

Voting access left to the whims of state lawmakers has proven that the scourge of voter suppression reaches far beyond the states and jurisdictions previously covered by the VRA. The proliferation of state anti-voting laws across the country demonstrates the urgent need for Congress to bring the VRA's preclearance formula into the modern era, to reinstate federal oversight over discriminatory voting practices, to address the Court's recent misinterpretation of Section 2's vote-denial standards, and to strengthen and protect voting rights wherever suppression occurs. States have proven time and time again, that they are incapable of monitoring themselves and federal legislation is needed to protect voters.

Congress purposefully designed Section 5 to address our current crisis. Congress's predecessors on both sides of the aisle and with the signature of presidents from both major political parties supported for nearly 50 years Section 5, a provision meant to address racial discrimination in voting and block any practices and procedures which may result in discrimination before they are implemented, elections are held, and irreversible harms to voters occur. This prophylactic function of Section 5 was the express intention of the 89th Congress in 1965, which expressly sought to prevent not only then-existing discriminatory voting schemes, but to also prevent the "ingenious methods" that might be devised to suppress votes in the future.[97]

The passage of the VRA was spurred by the grassroots activism of thousands across the country, and especially in the South, who faced down billy clubs, police dogs, and vitriol from white mobs in order to secure the unencumbered right to vote. It was the result of the tremendous sacrifice of those beaten on the Edmund Pettus Bridge, including the late Congressman John Lewis, the martyrdom of Medgar Evers, Jimmie Lee Jackson, Viola Gregg Liuzzo, Andrew Goodman, James Chaney and

[97] U.S. Congress, House, Committee on the Judiciary *Voting Rights,* 89th Cong., 1st sess., 1965, Mar. 18–19, 23–25, Apr. 1, 1965.

Michael Schwerner and so many unnamed others[98] that proved crucial in ensuring that the federal government take seriously its duty to affirmatively enforce the right to the franchise. In short, the right to vote that we enjoy today was forged by courageous people who demanded change and demanded the protection and expansion of the franchise. The activists and protestors and organizers of today are carrying forward those torches of change, lit during the struggle for freedom from slavery and sustained during the Civil Rights Movement throughout the 1960s, to ensure that the next generation can exercise the right to vote as a tool for transformation.

It is the heroism of average Americans to speak out, protest and demand change when faced with injustice, that we see again today in the calls for federal legislation to protect the right to vote. It is the obligation of this generation of lawmakers to respond to their call and ensure that the hard-won gains of the past are not lost. People and institutions across the country have decried the onslaught of voting restrictions, from influential Black executives in corporate America, corporations like Coca Cola and Delta Airlines,[99] sports associations like Major League Baseball,[100] film industry icons,[101] religious leaders,[102] and more. In 2020, we saw thousands of people risk contracting the deadly COVID-19 virus in order to exercise their full rights as American citizens by voting. [103] The ability to participate

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

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

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

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

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

[103] Jocelyn Stewart, *People Died So I Could Vote*, Time Magazine (Sep. 23, 2014) https://time.com/3423102/people-died-so-icould-vote/.

in civic life—to have a voice in choosing the elected officials whose decisions impact our lives, families, and communities—is at the core of citizenship.

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

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

Conclusion

Congress has the constitutional authority to enact legislation that prevents the denial or abridgement of the right to vote on account of race today just as it did in 1965 and 1982. The VRA's preclearance process provided a quick, efficient, and non-litigious way of addressing America's pervasive and persistent problem of voting discrimination, and most importantly to address it *before* the harm of disenfranchisement occurred. This Congress should not retreat from establishing a new preclearance framework that reflects the current conditions of the nation. Nor should it fail to address the attempted weakening of Section 2 by the *Brnovich* decision.

The VRA was drafted to rid the country of discrimination in voting—not to freeze voting rights at a set moment in history or to reduce discrimination to a level tolerable by some and now considered the norm across the country. The denial or abridgment of the right to vote can never be fully remedied. As the Supreme Court once stated, "Other rights, even the most basic, are illusory if the right to vote is undermined."[104] The preclearance framework of the VRA, backed up by Section 2, was established expressly to address such harms. It is past time for Congress to fulfill its constitutional duty to the American people by once again taking up the charge of eradicating racial discrimination in voting and by renewing its commitment to protecting and strengthening the fundamental right to vote.

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104 *Wesberry v. Sanders*, 376 U.S. 1, 17 (1964).

Testimony Before the United States Senate Judiciary Committee's Subcommittee on the Constitution

Hearing on "Restoring the Voting Rights Act after Brnovich and Shelby County" July 14, 2021

T. Russell Nobile
Senior Counsel
Judicial Watch, Inc.

Good Morning Chairman Blumenthal, Ranking Member Cruz, Members of the Subcommittee, and my fellow witnesses. Thank you for the invitation to speak with you today.

My name is Russ Nobile. I am a Senior Attorney at Judicial Watch Inc. and part of its election integrity group. Judicial Watch is 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 16 years. I have specialized knowledge and expertise in voting law. I served as a Trial Attorney for the Civil Rights Division of the U.S. Department of Justice for seven years. During this time, I led numerous voting rights investigations, litigation, consent decrees, and settlements in dozens of jurisdictions. I received several awards during my time at the Department, including a Commendation in 2006 and a Service Award in 2010.

From 2006 to 2012, I worked in the Civil Rights Division's Voting Section, which is responsible for enforcing all provisions of the Voting Rights Act of 1965 ("VRA"),

National Voter Registration Act of 1993 ("NVRA"), and the Uniformed and Overseas Citizens Absentee Voting Act ("UOCAVA"). At different times during my tenure, I was the primary attorney assigned to monitor and receive reports out of certain Section 5 covered jurisdictions, such as South Carolina, Georgia, Mississippi, and Texas. I am particularly familiar with the VRA, which is the subject of my testimony today.

Some of my voting work at the Department of Justice included the 2008 case against Waller County, Texas over how its Registrar handled voter registration applications from students at Prairie View A & M University, an historically black university. That case ultimately led to a consent decree resolving violations of Section 5 and Title I of the Civil Rights Act of 1964.[1] The Justice Department's website shows that the Waller County case was one of the last Section 5 cases it brought before the 2013 U.S. Supreme Court decision in *Shelby County v. Holder*.[2] In 2011, I was part of the trial team that represented the United States at trial against Texas in the massive Section 5 case Texas filed over its 2010 redistricting.[3]

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

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

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

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

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

I. Brnovich v. DNC

In *Brnovich*,[4] the Supreme Court outlined for the first time a framework for how challenges to state time, place, and manner regulations ("TMP regulations") are handled under Section 2 of the Voting Rights Act. I do not believe the ruling departed from the traditional understanding of Section 2, as some have claimed. Rather, I see the *Brnovich* decision as providing much needed guidance regarding how Section 2's "totality of circumstances" analysis applies to vote denial claims. Much of the ruling would have been unremarkable had it been issued before the last fifteen years or so of relentless Section 2 challenges to election integrity regulations.

To put *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. Section 2 cases can largely be categorized as either vote dilution or vote denial cases. The distinction between dilution and denial cases is often overlooked and, thus, one of the most significant aspects of the *Brnovich* ruling is that it firmly established that these categories require different analyses.

[4] *Brnovich v. Democratic Nat'l Comm.*, Nos. 19-1257 and 19-1258, __ S. Ct. __, 2021 U.S. LEXIS 3568 (July 1, 2021).

Since its enactment, Section 2 cases have largely involved dilution claims.[5] *Brnovich* does not alter how those claims are handled going forward. Conversely, vote denial cases have largely proliferated over the last 15 years or so. These cases have generally involved challenges to race-neutral state TPM regulations. Many of these challenges have been directed at longstanding election integrity practices or other race-neutral regulations such as voter ID. These new type of denial claims often depend on statistics that amply allege burdens caused by targeted regulations. Yet, despite well-publicized claims of voter suppression during this same period, minority registration and turnout has continued to increase, while racial disparities have decreased.

Though it involved both intentional and result-based claims, the critical parts of the *Brnovich* ruling deal with how result-based vote denial cases are handled under Section 2. To assist in this process, the Court highlighted 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) than can be used to evaluate denial cases. Most of these "relevant circumstances" are the usual consideration any election lawyer would consider in preparing a Section 2 case. Importantly, the Court made clear that it was "not attempt[ing] to compile an exhaustive list," leaving the door open for future litigants to raise any other circumstances they contend are important to their claims. The Court then addressed which dilution considerations were

[5] 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.

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.

Ultimately, very little in *Brnovich* is new to anyone familiar with Section 2 enforcement. Vote denial raises different issues than vote dilution. Dilution-based metrics are often not material.

Justice Kagan's Dissent

I would like to address a point raised by Justice Kagan in her *Brnovich* dissent. Discussing Congress' use of the word "opportunity" in the 1982 amendment to Section 2, she wrote:

> That equal "opportunity" is absent when a law or practice makes it harder for members of one racial group, than for others, to cast ballots. When Congress amended Section 2, the word "opportunity" meant what it also does today: "a favorable or advantageous combination of circumstances" for some action. See American Heritage Dictionary, at 922. In using that word, Congress made clear that the Voting Rights Act does not demand equal outcomes. *If members of different races have the same opportunity to vote, but go to the ballot box at different rates, then so be it—that is their preference, and Section 2 has nothing to say. But if a law produces different voting opportunities across races—if it establishes rules and conditions of political participation that are less favorable (or advantageous) for one racial group than for others—then Section 2 kicks in.* It applies, in short, whenever the law makes it harder for citizens of one race than of others to cast a vote.

2021 U.S. Lexis 3568, *79 (emphasis added). Justice Kagan is correct that the text of Section 2 is not concerned about "outcomes." However, based on my experience at the Department of Justice and in private practice, many of those bringing Section 2 cases do not share her view. In fact, many recent Section 2 cases are launched because groups decide electoral practices are unequal after their preferred or expected outcomes do not occur and file suit in hopes the outcomes will be different under new court-ordered practices.

Section 2 enforcement practices at the Department of Justice often emphasized outcomes. This often involved consulting with in-house or outside consultants to develop explanations as to why outcomes were not as expected or why minority turnout failed to materialize in districts where they should (in theory) control electoral outcomes. Where the outcomes did not meet staff's expected outcomes, staff was encouraged to identify a discriminatory explanation as to why different races "go to the ballot box at different rates" (i.e., turnout).

In private practice, I have seen advocacy groups bring cases based solely on the failure of registered voters to turnout. For example, in 2019 I was part of a team that defended Mississippi's redistricting plan, which was being challenged as part of a vote dilution case brought by a national advocacy group representing local clients. Relevant here, plaintiffs there claimed that a state senate district violated Section 2 even though its black voting age population (BVAP) exceeded 50% and had been precleared under Section

5. *Thomas v. Bryant*, 938 F.3d 134, 140 (5th Cir. 2019).[6] In ruling for the plaintiffs, the district court concluded that black voters did not have an *equal opportunity* with white voters, despite the obvious tension between that ruling, the facts on the ground, and the text of Section 2. Yet, when the members of a racial group constitute a *real* majority of the voting age population, they by definition have a *greater* opportunity to elect their candidates of choice.

II. Civil Rights Division

Before turning to *Shelby County v. Holder* and the proposed legislation expanding the VRA, I would like to touch briefly on my experiences while a trial attorney at the Civil Rights Division. Various proposals being public discussed suggest that the Department of Justice's Voting Section will have significantly enhanced responsibilities under almost every scenario.

There has been tremendous recent debate over the use of Critical Race Theory ("CRT") by public and private institutions. While it has been almost nine years since I left the Civil Rights Division, I submit based on my experience there are few places in the federal government that are more dominated by the assumptions that underlie CRT. The partisanship and hostility towards staff that do not hold the same assumptions is startling. Section staff (both professional and administrative) know how to identify other staffers who do not subscribe their views. While many of the staff simply ignore the views of those they disagreed with, others showed a shocking level of intolerance to those they disagreed

[6] The ruling was later vacated before the appeal could be completed. *Thomas v. Reeves*, 961 F.3d 800 (5th Cir. 2020).

with and, in some cases, actively harassed them as recounted in the 2013 report issued by the Department of Justice's Inspector General.[7] I personally witnessed many of the episodes chronicled in the OIG report and several that were not. Even within arguably the most political town in the country, the culture of the Voting Section stands out for its partisanship. Any legislation that shifts greater federal power to the Department's Voting Section will make elections worse, not better.

III. Section 5 of the VRA and Shelby County

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

This data led Congress to enact the Voting Rights Act of 1965, which was comprised of permanent statutes banning discrimination as well as a unique, temporary statute, Section 5. Congress developed Section 5 after it "found that case-by-case litigation was

[7] https://oig.justice.gov/reports/2013/s1303.pdf

inadequate to combat widespread and persistent discrimination in voting, because of the inordinate amount of time and energy required to overcome the obstructionist tactics invariably encountered in these lawsuits." *South Carolina v. Katzenbach*, 383 U.S. 301, 328 (1966). Through Section 5, Congress created an unusual remedy to limit discrimination without the need for prior adjudication, and to do so by subjecting only a specific set of jurisdictions to these extraordinary provisions. *Id.* As structured, Section 5 *presumed* that any voting change by a covered jurisdiction was implemented out of discriminatory intent or effect, until the jurisdiction proved otherwise. The Supreme Court ruled this presumption of guilt without a trial was justified in the context of the terrible racial discrimination occurring in 1965.

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

After *Shelby County*, it was reasonable to expect that the Justice Department would have shifted strategies focusing its resources on Section 2 enforcement. It would not have been surprising to see a large increase in the number of Section 2 cases brought by the Department since 2013, especially given the media's reporting of "rampant voter

suppression." Yet, there has been no noticeable uptick in the number of Section 2 cases brought during this time. In fact, the Justice Department has only brought five Section 2 cases since the *Shelby County* decision, two of which were a replacement for the Section 5 redistricting cases against Texas that were vacated following the *Shelby County* decision.[8] In fact, looking all the way back to the start of the Obama administration in 2008, the Justice Department has filed a total of ten Section 2 enforcement cases.[9] This is not to suggest that racism no longer exists. Nor is it an attack on my former DOJ colleagues' sincere desire to bring Section 2 cases. Rather, this is simply objective data that speaks to the issue of whether the Attorney General needs new authority to combat "rampant" voter suppression such that a case-by-case approach would be ineffective.

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

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

[9] *Id.*

Registration and Turnout Data[10]

Data, not pop culture nor hyperbole from those that oppose race-neutral election integrity laws, tells the true story of ballot access in America. To objectively evaluate whether racial minorities have an equal opportunity to participate in the electoral process, you must look at racial registration and turnout data. Looking at the most recent data, the opportunity to participate is exponentially better now than it was in 1965. Based on this data, it is hard to contend that Section 5 needs to be expanded as proposed in H.R. 4.

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

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

Turnout. The 2020 election had a higher turnout across all race groups.[11] 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 outperformed that of Whites.

There is a significant disconnect between the data and the media narrative. However one views any talking points about "rampant voter suppression," the data cannot be ignored: registration rates and turnout data in 2020 far exceed that in 1965. When black citizens now register and turnout at higher rates in places like Mississippi, it is simply not credible to claim that Jim Crow style voter suppression currently exists.[12]

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

Though it purports to remedy the problems highlighted by the Supreme Court in *Shelby County*, the truth is that H.R. 4 goes far beyond any civil rights law enacted during the height of the civil rights era. Rather, it is part of a grander plan to shift control of American elections away from individual state legislatures and into the hands of a single federal bureaucratic department. It accomplishes this by giving the Attorney General a

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

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

previously unseen level of authority over elections. Even more troubling than this change to our constitutional tradition of leaving elections to the states, H.R. 4 will ultimately lead to lasting damage to the Department of Justice's credibility.

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

H.R. 4 proves that Congress indeed hides elephants in mouseholes.[13] Buried deep in its final pages, H.R. 4 grants the Attorney General authority to enjoin "any act prohibited by the 14th or 15th Amendment" of the Constitution.[14] This little-noticed provision will abolish a longstanding legal principle, leading to highly contentious litigation between states and the Attorney General. It is difficult to overstate the risk that this new law creates to the Department of Justice and the states. Congress should end this unprecedented effort to further inject the Justice Department into partisan election disputes before it goes any further.

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

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

14 Sec. 7(a) of H.R. 4.

In the election context, we need only look to the 2020 presidential election to see the impact this provision would have had. Virtually every dispute during the 2020 election involved a 14th Amendment claim. While many praised Attorney General Barr's restraint in not involving the Department of Justice in that litigation, he undoubtedly declined to act because, as the Attorney General, he lacked standing over 14th Amendment disputes. If H.R. 4 had been implemented in 2019, the Justice Department would have been under enormous pressure to intervene or bring its own 14th Amendment case, such as suing to stop last last-minute changes to election laws rushed through Pennsylvania, Arizona, Wisconsin, North Carolina, Georgia, and Michigan. The exact same can be said about the highly partisan dispute in *Bush v. Gore*.

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

What is more alarming is that the new 14th Amendment powers in H.R. 4 are not limited to voting rights.[15] As written, the Attorney General will be allowed to bring *any*

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

> d) Civil action by Attorney General for preventive relief; injunctive and other relief
> Whenever any person has engaged or there are reasonable grounds to believe that any person is about to engage in any act or practice prohibited by the 14th or 15th Amendment, this Act, or any Federal voting rights law that prohibits discrimination on the basis of race, color, or membership in a language minority group, *the aggrieved person or (in the name of the United States) the Attorney General may institute* an action for preventive relief,

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

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

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

H.R. 4's new coverage formula for traditional Section 5 creates incentives that pervert civil rights enforcement. Under H.R. 4, jurisdictions that have had a number of "voting rights violations" over a period of time will be subject to Section 5 coverage. The most obvious problem with this new coverage formula is the incentives it creates. H.R. 4 defines "voting rights violations" broadly, capturing minor settlements that never resolved

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including an application for a temporary or permanent injunction, restraining order, or other order, and including an order directed to the State and State or local election officials to require them (1) to permit persons listed under chapters 103 to 107 of this title to vote and (2) to count such votes.

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

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

the merits of any claims. This definition actually retroactively penalizes jurisdictions that previously entered into good faith settlements motivated by their desire to amicably resolve disputes and limit public costs without regard to the legitimacy of the claims. Having handled affirmative civil rights litigation, I can say firsthand that discouraging settlement is counterproductive to the enforcement of civil rights laws.

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

Regardless of coverage, it goes without saying that the bureaucratic nature of Section 5 discouraged jurisdictions from making good faith improvements to their voting laws. We may disagree on the degree, but anytime you drive up costs and increase

regulation, it discourages the targeted behavior (i.e., non-discriminatory changes to elections practices from 1966 – 2013). Much has been made of new voting changes implemented by covered jurisdictions since 2013, but such changes are to be expected. For 48 years, there were substantial costs and risks (both legal and political) associated with making even minor changes to how elections were conducted in Section 5 jurisdictions. The fact that changes have been made post-*Shelby County* does not mean that all of those changes were racially motivated.

There Is No Data Supporting Nationwide Section 5 Coverage

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

"Restoring the Voting Rights Act after *Brnovich* and *Shelby County*"

Hearing before the Senate Committee on the Judiciary, Subcommittee on the Constitution

July 14, 2021

QUESTIONS FROM SENATOR BLUMENTHAL

Questions for Mr. Jose Garza:

1. Statements at the hearing indicated that "in 2020, in Texas. . . 66% of registered voters cast their ballot—historic numbers of Hispanic and African American voters participated in the election[,]" and that because 66% of registered voters cast their ballot in the 2020 election in Texas, it showed that "anybody who wanted to cast their ballot who was legally qualified to do so had ample opportunity to do so and they did so in a very robust fashion."
    a. Is a 66% overall participation rate by registered voters probative of whether minority voters have the same opportunity to register and to vote as white voters? Why or why not?

        Answer: No. Turn out in Texas is low for all groups, but worse for Latino and other minority groups. Registration rates are low for Latino voters. Being proud of a 66% participation rate shows a disregard for full participation. Texas works hard to make voting harder in Texas, especially for minority citizens. Because we have one election where voters overcame the obstacles placed before them to reach 66%, is not a cause for celebration or evidence that the obstacles are of no consequence. What would the rate of turn-out have been without voter ID, without signature match on mail in ballots, with election day registration etc.? How many more Latino voters would have been eligible to vote without the flawed "citizenship" purge conducted by the state?

    b. Do you agree that Hispanic and African American voters in Texas had the same opportunity to register to vote or to vote in the 2020 election as white voters?

        Answer: No. Texas imposes more restrictions to registration meant to make it harder to register and to vote and those restrictions impacted the 2020 election. For instance, some but not all voters were purged from the registration rolls for not having names that exactly matched names on drivers licenses. Thus, if a new voter registered as Joe Garza, and had the exact same birth date and address as his Jose Garza driver's license he would be rejected and sent a letter to explain the difference in his name. Recent data shows this restriction impacted Latino voters more than Anglo voters.

    c. What facts should Congress be examining to determine whether minority voters are being subject to discriminatory voting conditions?

Answer: In my opinion, Congress should examine voting restrictions enacted by Texas in recent years and examine data on how the restrictions impact voters' participation. Some of these restrictions include: voter ID, restrictions on voter registration and who can deputy voter registrar, criminal penalties imposed on voters who make mistakes, signature matching on registration forms and on mail ballot applications, and others.

d. Is it correct that any qualified citizen who wants to cast a ballot in Texas can and has "ample opportunity" to do so? Can you provide additional detail about barriers to voting that qualified citizens in Texans faced in seeking to cast their ballots?

Answer: It is not correct. The answer to these questions is complicated. First, it cannot be answered without consideration of the history of voting in Texas. If you are poor and if you are black or brown you have been targeted for exclusion from participation throughout our history.

Then, what on the surface seems like small inconveniences become extremely difficult to overcome. For instance, if you have to go to the registration office to explain why you registered as Joe Garza when your driver's license shows you are Jose Garza, but you work during the hours that the registration office is open, it may be too much of an ask. Or if you are put to the task of explaining why you are registering to vote, but flawed government records show that you are a noncitizen you may fear that participation jeopardizes your ability to remain a citizen. Or if you assist more than one voter with an **application** for a mail ballot, you may be prosecuted for "election fraud". See attachment

TEXAS ELECTION CODE

Sec. 84.004. UNLAWFULLY WITNESSING APPLICATION FOR MORE THAN ONE APPLICANT. (a) A person commits an offense if:

(1) the person signs an application for a ballot to be voted by mail as a witness **for more than one applicant in the same election**; or

(2) the person signs an application for annual ballots by mail as a witness for more than one applicant in the same calendar year.

(b) It is an exception to the application of Subsection (a) that the person signed early voting ballot applications for more than one applicant:

(1) as an early voting clerk or deputy early voting clerk; or

(2) and the person is related to the additional applicants as a parent, grandparent, spouse, child, or sibling.

(c) A violation of this section does not affect the validity of an application involved in the offense.

(d) Each application signed by the witness in violation of this section constitutes a separate offense.

(e) An offense under this section is a Class B misdemeanor.

(EMPHASIS ADDED)

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August 30, 2022

Senator Richard J. Durbin
United States Senate
Committee on the Judiciary
Washington, D.C. 20510

VIA ELECTRONIC MAIL

Dear Senator Durbin:

This letter is in response to your letter of August 25, 2022 forwarding to me questions from two Committee members following my testimony at the Senate Committee on the Judiciary, Subcommittee on The Constitution, hearing entitled "Restoring the Voting Rights Act after *Brnovich* and S*helby County*" on Wednesday, July 14, 2021. My responses to the questions are appended to this letter.

Please let me know if you have any further questions.

Very Truly Yours,

Richard L. Hasen

Richard L. Hasen

QUESTIONS FROM SENATOR FEINSTEIN

1. I am concerned that the Supreme Court's decisions in *Shelby County v. Holder* and *Brnovich v. DNC* have made it easier for states to pass and defend discriminatory voting measures.

   a. How do you think Congress can improve on the *John Lewis Voting Rights Advancement Act* so that we are doing all that we can to protect the right to vote?

   The John Lewis Voting Rights Advancement Act could be improved through additional congressional hearings before passage that would demonstrate that the mechanisms for preclearance (both the formula based upon previous adverse voting rights determinations and those based upon particular types of laws) are appropriately tailored. The Supreme Court in the *Shelby County* case has indicated it will look for recent evidence of intentional racial discrimination in voting to justify a preclearance measure when challenged by states as an infringement on state sovereignty. The stronger the record that Congress can create, the better the chances that the measure will sustain a constitutional attack.

   b. In addition to the *John Lewis Voting Rights Advancement Act*, what other federal legislative measures do you believe are necessary to limit the ability of states to restrict voting rights?

   Congress has broad powers under the enforcement powers contained in the Elections Clause of Article I, Section 4, as well as in the Fourteenth, Fifteenth, Nineteenth, Twenty-Fourth, and Twenty-Sixth Amendments to pass a great deal of federal legislation protecting voters. One important piece of legislation would put the onus upon states to justify laws placing new burdens on voting or voter registration by demonstrating with actual evidence that such laws actually promote important state interests and are suitably tailored to advance those interests. Many state election laws passed today in the name of preventing voter fraud or promoting voter confidence do not serve these goals but instead put roadblocks in front of voters for no good reason.

2. In your testimony, you wrote that if Congress considers legislation to restore Section 2 or Section 5 of the *Voting Rights Act*, "it will have to offer record evidence showing constitutional voting rights violations within the states, and the need for congruent and proportional legislation to deal with the scope of the constitutional violations."

   a. Can you elaborate on the type of evidence you believe Congress must demonstrate with regard to legislation restoring Sections 2 and 5 of the *Voting Rights Act*?

   Such evidence includes evidence of lawsuits proving intentional discrimination or settlements of such lawsuits; statements of legislators and others that are probative as to discriminatory intent; and comparisons of rates of voting and registration in areas alleged to engage in intentional discrimination with those that do not engage in such discrimination.

   b. In your view, is the *John Lewis Voting Rights Advancement Act* a congruent and proportional response to constitutional violations of the right to vote that have occurred since the *Shelby County* decision?

   I believe that Congress has the power to pass the John Lewis Voting Rights Advancement Act, and that there is record evidence that Congress has and can create that would meet the Supreme Court's (in my view, incorrect) congruence and proportionality test. I am uncertain, however, whether the current Supreme Court would uphold parts of the Act if is passed despite the existence of this evidence because members of the Court have shown general hostility toward voting rights and voting rights legislation in recent years.

   c. What can Congress do to restore Section 2 of the *Voting Rights Act* so that people who are disparately impacted by a state voting restriction still have the ability to bring a lawsuit to protect their right to vote?

   Congress can pass legislation explicitly explaining that the Supreme Court's interpretation in *Brnovich* of Section 2 of the Act was incorrect and restoring the earlier standards used by lower courts to determine when election administration laws violate Section 2. Congress can also clarify the scope of

Section 2 as applied to redistricting in advance of the Supreme Court's expected decision this term in the Alabama redistricting case, *Milligan v. Merrill*. It should explicitly reject the race neutral standard that Alabama has argued for in the Supreme Court, which would turn Section 2 on its head.

d. You describe the section of *Brnovich*, in which the majority asserts that a disparate impact test for Section 2 violations might "deprive states of their authority to establish non-discriminatory voting rules," as "a threat to find new congressional voting rights legislation unconstitutional." In light of this threat, what measures can Congress take to ensure legislation to restore Section 2 can withstand a constitutional challenge?

In light of the hostility to voting rights shown by some Justices on the Supreme Court in recent years, it is possible that nothing that Congress does can insulate a revised Voting Rights Act from an adverse ruling. Nonetheless, my advice is to create the strongest evidentiary record possible showing that a revised Voting Rights Act is necessary, and that the means that Congress has crafted are appropriately tailored to the problems voters face. Congress may also consider writing provisions with backup legislation to kick in should the Supreme Court hold parts of voting rights legislation unconstitutional. Congress should also include a section on severability.

3. In 2006, you warned that without changes to the coverage formula in Section 4, the Supreme Court could strike down the preclearance provisions of the Voting Rights Act.

a. Do you believe the *John Lewis Voting Rights Advancement Act* would strengthen the Section 5 preclearance regime so that it is less vulnerable to a potential constitutional challenge, and if so, why?

Yes, the John Lewis Voting Rights Advancement Act would be less vulnerable to Constitutional challenge because it uses triggers for coverage that are more closely tied to current conditions in voting in the states. The Supreme Court in *Shelby County* held that the failure to update the coverage formula for preclearance (using data from the 1960s and 1970s) rendered this part of the Act once constitutional no longer constitutional.

b. How do you think Congress can improve on the preclearance provisions included in the *John Lewis Voting Rights Advancement Act* so that it can best withstand a potential constitutional challenge?

See my answer to Question 1.a above.

c. Do you interpret the Supreme Court's doctrine of "equal sovereignty" to mean that federal pre-clearance provisions must apply equally to all states? If not, do you believe Congress has the power to pass legislation applying additional scrutiny to states that have exhibited a history of racial discrimination?

No. Although the doctrine of "equal sovereignty" that the Supreme Court used in *Shelby County* has not been fully developed, the best understanding is that it prohibits treating similarly situated states unequally. Thus, if two states have equal histories of racial discrimination in voting, it would be impermissible to subject one state to preclearance and not the other. Under this understanding, Congress has the power to pass legislation applying additional scrutiny to states that have exhibited a recent history of racial discrimination in voting.

4. Some of the best tools available to establish the discriminatory impact of state voting laws are social science models. However, you argue that Chief Justice John Roberts exhibits "real or pretextual naiveté about what social scientists and, by extension, courts can know about voters' political behavior."

a. What measures can Congress take to ensure that courts give full consideration to social science and other forms of data on voter behavior, so that it can be effectively used to demonstrate the disparate impact of state voting laws?

Congress can amass a clear legislative record demonstrating disparate impact, with explanations that elucidate the scientific method used for determining that impact. Relying upon peer reviewed studies helps to assure the accuracy and fairness of the analyses.

QUESTIONS FROM SENATOR BLUMENTHAL

Questions for Prof. Richard Hasen:

1. Statements at the hearing reflected that "the gap between minority voting participation and white voting majority participation shrunk to almost zero."
    a. Is it correct that the racial gap in voting has shrunk to "almost zero?"
    b. Is this the appropriate metric to use to evaluate whether Congress should enact voting protections specifically for minority communities? If not, why not?

Far from "almost zero," since 1996, the racial voting gap (between White voters on the one hand and Black, Hispanic, and Asian voters on the other) in presidential elections has only shrunk following elections in 2008, 2012, and 2020, and in all these times of fluctuation, the narrowest gap was still eight percentage points according to U.S. Census Bureau data.[1] Though voter turnout surged in 2020, among all racial demographics, the gap between minority voting participation and the white voting majority shrank only from 12.6% in the 2016 presidential election to 12.5% in 2020.[2] More specifically, in the southern states previously covered by "preclearance" under the Voting Rights Act of 1965, the racial voting gap in 2020 grew between white and black voters following the closing of the gap in these states in 2012.[3] Only Mississippi retained a higher percentage of black voter turnout in comparison to white voter turnout in the 2020 election, and the remaining preclearance states range in the black-white voting gap from 3.1% in North Carolina to 15.1% in South Carolina.[4]

Additionally, in midterm elections, the racial gap is even more pronounced. Since 1986, the narrowest racial voting gap in a midterm election was 9.47% (in the 1986 election).[5] Since that time, the racial voting gap has reached as high as 15.97% in the 2006 midterm election.[6] In the most recent 2018 midterm, the gap was 13.2%.[7] Similar to presidential elections, the racial voting gap has shrunk only following midterms in 1998, 2010, and 2018.[8] Though the racial voting gap is yet to be determined in the upcoming 2022 midterm election, current trends indicate it will be nowhere near "almost zero." Further, when looking at previously covered preclearance states under the Voting Rights Act, the voting gap expanded between white and nonwhite voters from the 2014 midterm

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[1] Kevin Morris & Coryn Grange, *Large Racial Turnout Gap Persisted in 2020 Election*, BRENNAN CENTER FOR JUSTICE (Aug. 6, 2021), https://www.brennancenter.org/our-work/analysis-opinion/large-racial-turnout-gap-persisted-2020-election
[2] *Id.*
[3] Kevin Morris, Peter Miller & Coryn Grange, *Racial Turnout Gap Grew in Jurisdictions Previously Covered by the Voting Rights Act*, BRENNAN CENTER FOR JUSTICE (Aug. 20, 2021), https://www.brennancenter.org/our-work/research-reports/racial-turnout-gap-grew-jurisdictions-previously-covered-voting-rights
[4] *Id.*
[5] *Voter Turnout Demographics*, UNITED STATES ELECTION PROJECT, http://www.electproject.org/home/voter-turnout/demographics (last visited Aug. 29, 2022).
[6] *Id.*
[7] *Id.*
[8] *Id.*

election up to the 2018 election in Alabama, Louisiana, North Carolina, Florida, and Texas.[9] The voting gaps in these states in the 2018 midterm election ranged from a low of 4.9% in Louisiana to 19% in Texas.[10]

Not only do recent and current voter turnout data indicate the existence of a racial voting gap, but there is evidence of flaws in the data used to analyze turnout among demographic groups that could mean even greater turnout gaps exist among racial groups.[11] The Current Population Survey (CPS) has been relied upon by researchers for data on turnout rates among racial groups.[12] Comparisons of data between 2008-2018 from the CPS and six southern states' voter files (digital databases compiled from public records indicating voter registration and voting in past elections) revealed that, in all elections during that time period, the CPS consistently overestimated voter turnout among Black and Hispanic voters.[13] In some cases, such as the CPS estimate of turnout among Hispanics in 2010, the difference in estimates was greater than 19 percentage points.[14] In comparison, the CPS slightly overestimated white voter turnout in the six southern states in 2008, 2010, 2014, and 2018 while actually underestimating white turnout in 2012 and 2016.[15] Explanations for this discrepancy between CPS and voter file data include a greater likelihood of nonresponse to survey questions on registration and turnout by minority groups causing overestimation, a difference in misrepresentation of turnout among racial groups, and differential panel attrition, meaning a greater likelihood of minority groups being overrepresented on the CPS due to a higher rate of attrition after the first round of surveys.[16]

Comparing the CPS and voter files, the racial voting gap is likely even more extreme than CPS data indicate. For this reason, using these data to evaluate whether Congress should enact voting protections for minority communities can skew the perception of such protections' necessity. However, even CPS data show a significant gap still exists among racial groups' voter turnout in both midterm and presidential elections.[17] Though flawed, an analysis of the racial gap in voting provides a relevant metric for measuring both the inequities that still exist in voting and the results of restrictive voting laws enacted. In 2008, high turnout among nonwhite voters led to an increase in restrictive voting laws, and following the increased turnout in 2020, similar measures are being put into place.[18] With such measures being enacted, an understanding of the racial turnout gap helps to understand the effects that restrictive laws are having on minority voters.

While a racial gap in turnout it relevant to voting rights legislation, it is not the only way of measuring whether minority voters are made worse off by particular voting laws or whether they have

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[9] Morris, Miller & Grange, *supra* note 3.
[10] *Id.*
[11] Stephen Ansolabehere, Bernard L. Fraga & Brian F. Schaffner, *The Current Population Survey Voting and Registration Supplement Overstates Minority Turnout*, 84 J. POL. 1850 (2022).
[12] *Id.*
[13] *Id.* at 1852; Drew Desilver, *Q&A: The Growing Use of "Voter Files" in Studying the U.S. Electorate*, PEW RESEARCH CENTER (Feb. 18, 2018), https://www.pewresearch.org/fact-tank/2018/02/15/voter-files-study-qa/
[14] Ansolabehere, Fraga & Schaffner, *supra* note 11, at 1852.
[15] *Id.*
[16] *Id.* at 1853-54.
[17] *Voter Turnout Demographics*, *supra* note 3.
[18] Morris & Coryn, *supra* note 1.

less opportunity than other voters to participate in the political process and to elect representatives of their choice.

2. Statements and testimony at the hearing indicated that the Voting Rights Advancement Act would require preclearance for "mere allegations" and "not proof of voter discrimination," and that "all it takes is allegations . . . by the Attorney General" for states to fall under the preclearance requirement.
    a. Is this true or false?
    b. How do the coverage formulas trigger application of preclearance requirements to jurisdictions under the VRAA?

This statement is false. Under the VRAA Section 5(b)(3), there are five different ways in which a state or political subdivision may have committed a "voting rights violation" for purposes of determining if there have been enough violations to trigger preclearance. These include judicial determinations that a state has violated the Constitution or provisions of the Voting Rights Act. One of the ways to show a voting rights violation, contained in Section 5(b)(3)(D), is through an "objection by the attorney general" brought against a state or political subdivision that is already subject to preclearance under the Voting Rights Act. The Department of Justice has developed in the past, and would develop in the future, criteria to be applied to determine when it should raise an objection consistent with the standards Congress itself sets forth in the Voting Rights Act. The Attorney General is bound to apply the law, not to use a standardless veto based upon mere allegations of a Voting Rights Act violation. More importantly, any jurisdiction that wishes to defend itself against an objection interposed by the Attorney General may challenge that determination in court, assuring that "mere allegations" are not enough to trigger further voting rights scrutiny.

3. There was testimony at the hearing that federal voting protections amount to a "veto" of state legislatures and undermine democracy.
    a. Do the enforcement mechanisms under the VRAA amount to a "veto" of state-level voting laws?

No. When the states ratified the Reconstruction Amendments, they specifically gave Congress the power to enforce them with "appropriate legislation." In the 1960s, Congress determined that states that had a history of racial discrimination in voting needed to put their laws through an extra layer of judicial (or, at the state's option, administrative) review to assure that protected minority voters were not made worse off. The VRAA would restore that review for states that have a recent history of racial discrimination in voting and for

laws that generally may have a racially discriminatory impact. This extra layer of judicial review is not a veto of legislation. It enhances democracy rather than threatens it.

b. Does Congress have an interest in ensuring voting laws are nondiscriminatory before voters are required to vote under conditions imposed by the law?

Yes; I would argue that Congress has a constitutional obligation under the Fourteenth and Fifteenth Amendments to ensure there is no racial discrimination in voting occurring in the states, and it has further authority to regulate federal elections under the Elections Clause that it may exercise to ensure voting laws are nondiscriminatory.

c. What is the extent of Congress' authority to enact enforcement legislation that protects the right to vote against discriminatory or overly burdensome state and local voting procedures?

Congress has broad latitude to protect voting rights under the enforcement powers contained in the Elections Clause of Article I, Section 4, as well as in the Fourteenth, Fifteenth, Nineteenth, Twenty-Fourth, and Twenty-Sixth Amendments.

d. Does the VRAA adhere to principles of federalism?

Yes. The Reconstruction Amendments shifted power from the states to Congress to prevent racial discrimination in voting. Following the Civil War, Congress did not do enough to prevent certain states from discriminating in voting on the basis of race. The Voting Rights Act of 1965 sought to remedy that failing by Congress, and the VRAA would further the process that Congress began in 1965. Protecting all Americans from racial discrimination in voting does not violate principles of federalism, because both states and the federal government must not act in ways that are racially discriminatory.

e. Does federal voting rights legislation such as the VRAA enacted pursuant to a Congress' constitutional powers "undermine democracy"?

The VRAA would enhance democracy, rather than undermine it, for reasons I gave in my earlier answers.

Restoring the Voting Rights Act after *Brnovich* and *Shelby County*

Ms. Janai S. Nelson
President and Director-Counsel, NAACP Legal Defense and Educational Fund, Inc.
Questions for the Record
Submitted July 21, 2021

QUESTIONS FROM SENATOR FEINSTEIN

1. **I am concerned that the Supreme Court's decisions in *Shelby County v. Holder* and *Brnovich v. DNC* have made it easier for states to pass and defend discriminatory voting measures.**

   a. How do you think Congress can improve on the *John Lewis Voting Rights Advancement Act* so that we are doing all that we can to protect the right to vote?

The *John Lewis Voting Rights Advancement Act* (VRAA) has been a direct response to the increase in voter suppression and discriminatory behaviors that has resulted from the Supreme Court's *Shelby Country* and *Brnovich* decisions, with provisions that are updated to address modern forms of voting discrimination that have underscored the urgent need for robust voting rights protections.

LDF supports the VRAA in full. In addition, LDF stands ready to work with this Committee to identify potential ways to strengthen the VRAA in response to the 2020 election—which demonstrated the need for appropriate protections at all stages of the voting process, including the counting of ballots and certification of results—and in response to the experience of Black voters and other voters in the upcoming November 2022 elections. LDF will continue to monitor voting in this election through our Prepared to Vote ("PTV") initiative and our Voting Rights Defender ("VRD") project, which 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. LDF is also a founding member of the non-partisan civil rights Election Protection Hotline (1- 866-OUR-VOTE), presently administered by the Lawyers' Committee for Civil Rights Under Law. The experiences, reports, and information collected during this election cycle may point to potential ways to strengthen the VRAA in the future.

   b. In addition to the *John Lewis Voting Rights Advancement Act*, what other federal legislative measures do you believe are necessary to limit the ability of states to restrict voting rights?

In addition to the VRAA, LDF also strongly supports the For the People Act and the Freedom to Vote Act ("FTPA/FRVA), a set of critical reforms that have been introduced in

previous Congresses as H.R. 1 and S. 1. These measures constitute a vital step forward to increase Americans' access to the ballot box, counteract the effects of racial and partisan gerrymandering, and promote transparency in the campaign finance system. The FTPA/FRVA covers four primary subject areas:

(1) Voting Rights: The FTPA/FRVA requires the establishment of a system of automatic voter registration and ensures that states hold at least 14 consecutive days of early, in-person voting. These measures ensure that voting registration is accessible to all voting-age individuals, mail-in initiatives are expanded, and that polling places are accessible to rural populations, students, and those with disabilities.

(2) Election Security: The FTPA/FRVA seeks to limit partisan interference with election administration and protect voters from intimidation and misinformation through limiting the ability of statewide election officials to remove local election administrators, making it a federal crime to intimidate or threaten election officials, and ensuring that post-election audits are completed.

(3) Redistricting: The FTPA/FRVA prohibits partisan and racial gerrymandering through setting forth new, mandatory criteria for states to use when drawing their congressional districts. This initiative will expand protections for minority voters and enhance transparency in the creation of such maps.

(4) Campaign Finance: The FTPA/FRVA increases transparency and oversight through mandating expenditures for donors who give large amounts of money, strengthens the FEC's enforcement process, and provides funds for states to improve their voting administration and infrastructure.

Together, the provisions in the FTPA/FRVA provide a North Star for the democracy reform agenda. They constitute a bold, comprehensive reform package that offers solutions to a broken democracy. Repairing and modernizing our voting system goes hand in hand with reforms that address the corrosive and inequitable power of money in our elections, and reforms that address the myriad ethical problems that plague all three branches of the federal government. The reforms in the FTPA/FRVA are necessary to advance racial justice, promote equal access to the political process, and ensure that our government works for all people, not just a powerful few. We urge Congress to adopt this critical measure, whether as a standalone bill or as part of a combined package with the VRAA, to further protect the right to vote.

2. **In your testimony, you write that "litigation is slow and costly – and court victories may come only after a voting law or practice has been in place for several election cycles."**

   a. **In light of this statement, what is your view on a proposal by some in Congress to update the *John Lewis Voting Rights Advancement Act* to "decrease the Attorney General's authority to deem a state or locality's actions a voting rights violation without a judicial finding of discrimination?"**

Under the John Lewis Voting Rights Advancement Act considered by the Senate as S.4 during the 117th Congress, "voting rights violations" are defined to include a numerated set of outcomes, among which are judicial findings of violations of the Fourteenth or Fifteenth Amendments or of the VRAA itself, consent decrees that contain an admission of liability for a voting rights violations, and Attorney General objections that prevent a proposed voting law or practice from being granted preclearance. All components of this definition are appropriate and well justified by case law and practice under the Voting Rights Act of 1965 and the congressional record. With respect to Attorney General objections, these determinations are a key component of equitable voting rights adjudications and should certainly continue to qualify as voting rights violations under the VRAA's updated geographic coverage formula.

Throughout the Voting Rights Act's history, Congress has assigned key aspects of its enforcement to the Attorney General. These include not only the power to make preclearance determinations under Section 5,[1] but also the power to determine whether a jurisdiction has maintained a "test or device," a determination that can trigger preclearance coverage,[2] and the power to appoint federal election observers, including the authority to exercise judgment to determine "when the assignment of observers is . . . necessary to enforce the guarantees of the 14th or 15th amendment."[3] In *South Carolina v. Katzenbach*, the Supreme Court rejected a challenge to these provisions brought by South Carolina and other states on separation-of-powers and other grounds, holding that Congress's decision to grant such powers to the Attorney General was "a valid means for carrying out the commands of the Fifteenth Amendment."[4]

The reasoning employed by the Court in *Katzenbach* applies as well to the VRAA's inclusion of Attorney General objections within the definition of voting rights violations for purposes of the updated coverage formula. In keeping with the traditional role of the Attorney General in voting rights enforcement, Congress is doing the same thing the Court specifically approved of in *Katzenbach*: "marshall[ing] an array of potent weapons against the evil [of voting discrimination], with authority in the Attorney General to employ them effectively."[5]

b. In addition, how would you respond to the claim that the injunctive relief standard is "too subjective as it requires the complaint to 'raise a serious question?'"

Section 109 of the VRAA establishes a new standard for plaintiffs seeking preliminary relief against likely voting rights violations to ensure that, in parts of the country where preclearance does not apply, there is still a remedy at law available to block voting changes that are likely to be problematic from being enforced while the merits of the litigation are decided. The preliminary injunctive standard set forth in this portion of the VRAA is a necessary and appropriate response to the Supreme Court's increasing use in recent years of a version of the principle set forth in *Purcell v. Gonzalez*, 549 U.S. 1 (2006), as well as the Court's expanded use

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1 52 U.S.C. § 10304.

2 *Id.* § 10303(b).

3 *Id.* § 10305(a)(2).

4 *Katzenbach*, 383 U.S. at 337.

5 *Id.*

of "its shadow docket to signal or make changes in the law, without anything approaching full briefing and argument."[6] To address the grave threat to the meritorious enforcement of voting rights statutes that these tendencies on the part of the Court represent, the VRAA simplifies the standard by instructing a court to grant preliminary relief if it determines that the plaintiff "has raised a serious question" as to whether a challenged practice violates federal voting rights statutes or the Constitution, and whether, absent the relief, the hardship imposed on the plaintiff would be greater than the hardship imposed on the defendant. Determining whether a plaintiff has raised a "serious question" will pose no interpretive challenge to federal judges, because it is an objective, proven standard drawn from federal practice, where for more than three decades courts have successfully applied it in various contexts.[7]

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[6] *See, e.g.*, *Merrill v. Milligan*, 142 S. Ct. 879, 889 (2022) (Kagan, J., dissenting).

[7] *See, e.g.*, *Bernhardt v. Los Angeles Cty.*, 339 F.3d 920, 932 (9th Cir. 2003) (concluding that the plaintiff "is entitled to a narrow injunction because she has succeeded in raising serious questions about the [challenged policy]"); *Republic of the Philippines v. Marcos,* 862 F.2d 1355, 1362 (9th Cir.1988) (serious questions are those "which cannot be resolved one way or the other at the hearing on the injunction" . . . they "need not promise a certainty of success, nor even present a probability of success"); *National Wildlife Fed'n v. Coston,* 773 F.2d 1513, 1517 (9th Cir. 1985) (Serious questions need not promise a certainty of success, nor a probability of success, but must indicate a "fair chance of success on the merits").

"Restoring the Voting Rights Act after *Brnovich* and *Shelby County*"

Hearing before the Senate Committee on the Judiciary, Subcommittee on the Constitution

July 14, 2021

QUESTIONS FROM SENATOR BLUMENTHAL

Questions for Ms. Janai Nelson:

1. **Statements at the hearing reflected that "the gap between minority voting participation and white voting majority participation shrunk to almost zero."**

    a. Is it correct that the racial gap in voting has shrunk to "almost zero?"

Unfortunately, it is simply untrue that the racial gap in voting in this country is "almost zero." In fact, according to statistics published by the Census Bureau, turnout disparities between white voters and voters of color persist at a nationwide average of over 12 percentage points, as of the most recent presidential election.[1] According to the Census Bureau, 70.9% of non-Hispanic white U.S. citizens voted in the November 2020 election.[2] By contrast, only 62.6% of Black citizens, 53.7% of Latino citizens, and 59.7% of Asian American citizens voted in that election.[3] In several states, racial turnout gaps exceeded this national average.[4] Indeed, in three states previously covered by Section 5 preclearance—Louisiana, South Carolina, and Texas—the turnout gap between Black and white voters in the November 2020 election was the highest yet recorded in this century.[5]

Concerningly, recent research indicates that the Census Bureau's statistics on turnout may overestimate the incidence of voting among communities of color, suggesting that racial turnout disparities may be even greater than Census data reveals.[6] And the state of voting discrimination since 2020 has been far from static—indeed, the recent onslaught of restrictive and likely discriminatory voting laws enacted at the state level in response the 2020 election will

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1 U.S. Census Bureau, *Voting and Registration in the Election of November 2020* (April 2021), https://www.census.gov/data/tables/time-series/demo/voting-and-registration/p20-585.html (Table 4b, Reported Voting and Registration, by Sex, Race and Hispanic Origin, for States: November 2020).

2 *Id.*

3 *Id.*

4 *Id.*

5 Kevin Morris, Peter Miller & Coryn Grange, *Racial Turnout Gap Grew in Jurisdictions Previously Covered by the Voting Rights Act*, Brennan Center for Justice (Aug. 20, 2021), https://www.brennancenter.org/our-work/research-reports/racial-turnout-gap-grew-jurisdictions-previously-covered-voting-rights.

6 Stephen Ansolabehere, Bernard L. Fraga & Brian F. Schaffner, *The CPS Voting and Registration Supplement Overstates Minority Turnout,* Journal of Politics (2021), https://static1.squarespace.com/static/5fac72852ca67743c720d6a1/t/5ff8a986c87fc6090567c6d0/1610131850413/CPS_AFS_2021.pdf.

likely exacerbate these racial turnout gaps still further.[7] Notably, many of these laws are directly targeted at blocking pathways to the ballot box that Black and Latino voters used successfully in 2020.[8]

b. Is this the appropriate metric to use to evaluate whether Congress should enact voting protections specifically for minority communities? If not, why not?

Turnout is a relevant consideration, but turnout alone is only part of the story. At best, it is an incomplete indicator of the unprecedented challenges faced by Black voters in recent elections, as recounted, in part, in LDF's *Democracy Defended* reports.[9] As I explained in my testimony before this Committee last year, relatively high turnout and registration rates among Black voters in 2020 occurred because of Herculean efforts by civil-rights groups, organizers, and activists, as well as sheer determination and resilience on the part of Black voters—and despite a litany of unequal obstacles that Black voters were forced to navigate and overcome across this nation. Overcoming unequal burdens does not mean those burdens do not exist. Nor is a two-tiered model of access to the franchise acceptable or lawful. As the Fifth Circuit explained in *Veasey v. Abbott*, LDF's lawsuit challenging Texas's discriminatory voter ID law,

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[7] Morris, Miller & Grange, *supra* note 5; *see also* Kevin Morris, *Patterns in the Introduction and Passage of Restrictive Voting Bills are Best Explained by Race, Brennan Center for Justice* (Aug. 3, 2022), https://www.brennancenter.org/our-work/research-reports/patterns-introduction-and-passage-restrictive-voting-bills-are-best.

[8] For example, after Black voters increased their usage of absentee ballots as a result of the pandemic, S.B. 90 in Florida severely curtailed the use of unstaffed ballot return drop boxes and effectively eliminated community ballot collection. *See generally* Complaint for Declaratory and Injunctive Relief, *Fla. State Conferences of Branches of NAACP v. Lee*, No. 4:21-cv-00187-WS-MAF (N.D. Fla. May 6, 2021), ECF No. 1. And in Georgia and Texas, after strong early in-person turnout among Black voters, lawmakers initially moved to outlaw or limit Sunday voting in a direct attack on the "souls to the polls" turnout efforts undertaken by many Black churches to mobilize voters to engage in collective civic participation. Letter from Sam Spital et al., LDF, to Texas Senate (May 29, 2021), https://www.naacpldf.org/wp-content/uploads/LDF-Conference-Committee-Report-OppositionSenate-20210529-1.pdf; Letter from John Cusick et al., LDF et al., to Ga. House of Representatives, Special Comm. on Election Integrity (Mar. 14, 2021), https://www.naacpldf.org/wpcontent/uploads/LDF-SPLC-Written-Testimony-on-SB202-3.18.21.pdf. In both states, after advocacy from LDF and others, lawmakers eventually removed these blatantly discriminatory provisions from the omnibus voting bills under consideration—although in both states, the final forms of the enacted bills remained extremely harmful to voters of color. Press Release, LDF, *LDF Files Lawsuit Against the State of Florida Over Suppressive Voting Law* (May 6, 2021), https://www.naacpldf.org/pressrelease/ldf-files-lawsuit-against-the-state-of-florida-over-suppressive-voting-law/; Press Release, LDF, *Civil Rights Groups Sue Georgia Over New Sweeping Voter Suppression Law* (Mar. 30, 2021), https://www.naacpldf.org/press-release/civil-rights-groups-sue-georgia-over-new-sweeping-votersuppression-law/. The 2021 omnibus voting law in Texas eliminated 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. Complaint for Declaratory and Injunctive Relief, *Houston Justice v. Abbott*, No. 5:21-cv-00848 (W.D. Tex. filed Sept. 7, 2021), ECF No. 1, https://www.naacpldf.org/wp-content/uploads/Houston-Justice-et-al.-v.-Abbott-et-al.-Complaint.pdf; *see also* Press Release, LDF, *Lawsuit Filed Challenging New Texas Law Targeting Voting Rights* (Sept. 7, 2021), https://www.naacpldf.org/press-release/lawsuit-filedchallenging-new-texas-law-targeting-voting-rights/.

[9] NAACP Legal Defense and Educational Fund, Inc. ("LDF"), Thurgood Marshall Institute, *Democracy Defended* (2021), https://www.naacpldf.org/wp-content/uploads/LDF_2020_DemocracyDefended-1-3.pdf.

discriminatory burdens on the right to vote can constitute an unlawful "abridgement" of that fundamental right regardless of whether some Black voters overcome the burdens and are able to cast ballots.[10] As the *Veasey* court observed, "in previous times, some people paid the poll tax or passed the literacy test and therefore voted, but their rights were still abridged."[11]

Today, poll taxes and literacy tests are no longer a feature of our electoral landscape, but discriminatory burdens on the right to vote persist, perpetuating new forms of the same "insidious and pervasive evil" that Congress found itself confronted with in 1965.[12] For example, post-election surveys[13] and analyses of smartphone data[14] have made clear that Black and Latino voters wait in significantly longer lines than white voters to cast their ballots in person. Black voters and other voters of color are also more likely to lack identification required to vote,[15] more likely to be unable to take time off work to vote,[16] more likely to be asked to vote by provisional ballot,[17] and more likely to have those provisional ballots rejected.[18] Clearly, there is still significant work for a restored, strengthened, and revitalized Voting Rights Act to do if this nation is to move closer to becoming a truly equitable, racially inclusive democracy.

2. **Statements and testimony at the hearing indicated that the Voting Rights Advancement Act would require preclearance for "mere allegations" and "not proof of voter discrimination," and that "all it takes is allegations . . . by the Attorney General" for states to fall under the preclearance requirement.**

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10 *See Veasey v. Abbott*, 830 F.3d 216, 260 (5th Cir. 2016).

11 *Id.* at 260 n.58.

12 *See South Carolina v. Katzenbach*, 383 U.S. 301, 309 (1966).

13 Hannah Klain et al., *Waiting to Vote: Racial Disparities in Election Day Experiences*, Brennan Center for Justice (June 3, 2020), https://www.brennancenter.org/sites/default/files/2020-06/6_02_WaitingtoVote_FINAL.pdf.

14 M. Keith Chen et al., *Racial Disparities in Voting Wait Times: Evidence from Smartphone Data* (Oct. 30, 2020), https://arxiv.org/pdf/1909.00024.pdf.

15 Alex Vandermaas-Peeler, Daniel Cox, Molly Fisch-Friedman, Rob Griffin & Robert P. Jones, *American Democracy in Crisis: The Challenges of Voter Knowledge, Participation, and Polarization*, PRRI (July 17, 2018), https://www.prri.org/research/American-democracy-in-crisis-voters-midterms-trump-election-2018/; *see also* Phoebe Henninger, et al., *Who Votes Without Identification? Using Individual-Level Administrative Data to Measure the Burden of Strict Voter Identification Laws* 13 (Sept. 29, 2020), https://scholar.harvard.edu/files/morse/files/mich_voter_id.pdf; Joel Kurth & Ted Roelofs, *Poor in Michigan with no ID. "I am somebody. I just can't prove it."*, Bridge Michigan (Sept. 26, 2017), https://www.bridgemi.com/urban-affairs/poormichigan-no-id-i-am-somebody-i-just-cant-prove-it.

16 Vandermaas-Peeler et al., *supra* note 15.

17 Daron Shaw, *Report on Provisional Ballots and American Elections* (June 21, 2013), http://web.mit.edu/supportthevoter/www/files/2013/08/Provisional-Ballots-Shaw-and-Hutchings.docx_.pdf; Joshua Field et al., *Uncounted Votes: The Racially Discriminatory Effects of Provisional Ballots, Center for American Progress* (Oct. 2014), https://cdn.americanprogress.org/wp-content/uploads/2014/10/ProvisionalBallots-report.pdf?_ga=2.111276417.42375908.1621859427-264694957.1618767359.

18 Thessalia Merivaki & Daniel A. Smith, *A Failsafe for Voters? Cast and Rejected Provisional Ballots in North Carolina*, Sage Journals (Sept. 19, 2019) https://journals.sagepub.com/doi/10.1177/1065912919875816; *see* Field et al., *supra* note 17.

a. Is this true or false?

The referenced statements and testimony are inaccurate. The Senate's proposed John Lewis Voting Rights Advancement Act (VRAA) would update and restore the Voting Rights Act's full protections for the modern era, reinstating federal oversight over discriminatory voting practices with a preclearance coverage formula based on objective data and reliable sources of evidence. More detailed information on the coverage formula is provided below in response to the second part of this question.

b. How do the coverage formulas trigger application of preclearance requirements to jurisdictions under the VRAA?

Among its critically needed provisions, the VRAA restores Section 5 preclearance, updating the formula that determines which geographic jurisdictions are subject to preclearance to meet contemporary challenges, as the Supreme Court directed in *Shelby County*.[19] The bill includes a modernized geographic coverage formula under which states and their subdivisions will be covered based on recent voting rights violations within a "rolling" period of years, as well as a new type of preclearance coverage formula that requires jurisdictions with growing racial minority populations to obtain preclearance before adopting certain practices that are widely known to discriminate against voters of color. Both elements of the coverage formula are based on objective criteria, justified by a voluminous congressional record attesting to an overwhelming number of discriminatory voting laws and policies, and in no way reliant on "mere allegations," whether by the Attorney General or anyone else.

3. **Statements at the hearing indicated that "in 2020, in Texas. . . 66% of registered voters cast their ballot—historic numbers of Hispanic and African American voters participated in the election[,]" and that because 66% of registered voters cast their ballot in the 2020 election in Texas, it showed that "anybody who wanted to cast their ballot who was legally qualified to do so had ample opportunity to do so and they did so in a very robust fashion."**

a. Is a 66% overall participation rate by registered voters probative of whether minority voters have the same opportunity to register and to vote as white voters? Why or why not?

Overall participation rates for the registered-voter population as a whole are not probative of whether certain groups of voters, such as Black or Latino voters, face inequities in the opportunity to register and to vote. Moreover, as discussed above in response to Question 1, it is a well-documented fact that racial turnout gaps persist at significant levels, both across the United States and, to an even greater extent, in several states formerly subject to Section 5 preclearance. And turnout levels alone cannot speak to the discriminatory barriers and challenges faced and overcome by Black voters in the registration and voting process. Moreover, as noted below, reported turnout levels show a significant racial gap.

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[19] *Shelby Cty., Ala. v. Holder*, 570 U.S. 529, 548 (2013).

b. Do you agree that Hispanic and African American voters in Texas had the same opportunity to register to vote or to vote in the 2020 election as white voters?

In fact, the evidence strongly suggests the opposite: that Latino and Black voters in Texas *did not* have the same opportunity to register to vote or to vote in the 2020 election as white voters. According to the Census Bureau's statistics on voter registration and voter turnout, 78.5% of non-Hispanic white citizens in Texas were registered to vote as of the 2020 election.[20] By contrast, only 69.9% of Black citizens in Texas—and only 63.2% of Latino citizens in Texas—were registered to vote as of that election.[21] These data reflect a registration gap, as of the 2020 election, of nearly 9 percentage points between white citizens and Black citizens and of more than 15 percentage points between white citizens and Latino citizens, strongly suggesting unequal opportunities to register to vote that fall along racial lines.

Adding context to these disparities in voter registration, Texas has a continuing record of flawed purge practices that disproportionately target naturalized U.S. citizens, a population which, in Texas, includes significant numbers of Latino and Black citizens.[22] This record includes a flawed purge attempted by the Texas Secretary of State in 2019 that improperly flagged 98,000 naturalized citizens for the cancellation of their voter registration before it was blocked by a federal court, and which ultimately induced the state to enter into a binding settlement agreement.[23] The Texas Secretary of State's methodology in 2019 was severely overinclusive—at least 99.9% of the individuals targeted for removal were naturalized citizens who had become U.S. citizens before registering to vote.[24] As the U.S. District Court for the Western District of Texas found at the time, "perfectly legal naturalized Americans were burdened with . . . ham-handed and threatening" actions by the Texas Secretary of State, which raised constitutional concerns and "exemplifie[d] the power of government to strike fear and anxiety and to intimidate the least powerful among us."[25] Unfortunately, Texas engaged in another over-inclusive purge of naturalized U.S. citizens as recently as 2021 using a "new

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20 U.S. Census Bureau, *supra* note 1.

21 *Id.*

22 *See* Robert Warren & Donald Kerwin, *The US Eligible-to-Naturalize Population: Detailed Social and Economic Characteristics*, 3 J. Migration & Human Security 306, 311 (2015); Abby Budiman et al., *Naturalized Citizens Make Up Record One-in-Ten U.S. Eligible Voters in 2020*, Pew Research Ctr. (Feb. 26, 2020), https://www.pewresearch.org/his-panic/2020/02/26/naturalized-citizens-make-up-record-one-in-ten-u-s-eligible-voters-in-2020/; New American Economy Research Fund, Power of the Purse: The Contributions of Black Immigrants in the United States (Mar. 19, 2020), https://research.newamericaneconomy.org/report/black-immigrants-2020/ (reporting that Texas is home to the highest number of Black immigrants from Africa and has the fifth-highest number of Black immigrants who are eligible voters of any state).

23 *Texas LULAC v. Whitley*, No. CV SA-19-CA-074-FB, 2019 WL 7938511, at *1–*2 (W.D. Tex. Feb. 27, 2019).

24 *Id.* at *1 ("Out of 98,000 new American voters on the list, thus far approximately 80 have been identified as being ineligible to vote.").

25 *Id.*

program [that] continues to flag eligible voters as suspected non-citizens,"[26] raising questions about the state's compliance with the terms of the 2019 settlement agreement.[27]

With respect to voter turnout, according to the Census Bureau, 72.0% of non-Hispanic white voters in Texas cast ballots in the Nov. 2020 election, as compared to only 60.8% of Black voters and 53.1% of Latino voters.[28] Thus, Census Bureau data from the 2020 election in Texas—which, as above, may overstate turnout among voters of color[29]— reflect turnout gaps of over 11 percentage points between white voters and Black voters and of nearly 19 percentage points between white voters and Latino voters. These racial disparities in turnout, as noted above, were the starkest yet seen in Texas this century[30]—and recent legislation in Texas may accelerate them.[31]

c. What facts should Congress be examining to determine whether minority voters are being subject to discriminatory voting conditions?

Racial disparities in voter turnout and ballot rejection rates are a relevant and appropriate consideration, which Congress should continue to examine. In addition, Congress should examine evidence, such as that discussed above, that Black voters and other voters of color are negatively impacted by longer wait-times at polling places,[32] less access to required forms of voter identification or underlying documentation, increased risk of being harassed or intimidated at the polls, decreased ability to take off time from work to vote,[33] higher likelihood of being forced to vote using a provisional ballot[34] and lower likelihood of having their provisional ballots counted,[35] and heightened risk of being removed from absentee-voting lists.[36] As I explained in my testimony before this Committee, Congress should also consider racial disparities and evidence of discrimination in other areas of life—including education, employment, healthcare, housing, and transportation—as the suppressive power of many restrictive voting laws in the past

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[26] Findings of Fact and Conclusions of Law at 4-5, *Campaign Legal Center v. Scott*, No. 1:22-cv-00092-LY, ECF No. 55 (W.D. Tex. Aug. 2, 2022) ("[I]n Tarrant County, at least 119 of the 675 suspected non-citizen voters provided documentation confirming citizenship. Likewise, 93 of the 385 suspected non-citizen voters in Travis County provided proof of citizenship, and 88 of the 302 suspected non-citizen voters in Collin County provided proof of citizenship.").

[27] Acacia Coronado, Paul Weber & Nicholas Riccardi, *New Texas voting law snags US citizens, mail ballot requests*, A.P. (Jan. 14, 2022), https://apnews.com/article/voting-rights-austin-texas-voting-legislature-f6bca0efd177745538e0c08aca796fb0.

[28] *Id.*

[29] Ansolabehere, Fraga & Schaffner, *supra* note 6.

[30] Morris, Miller & Grange, *supra* note 5.

[31] *See* Nick Corasaniti, Mail Ballot Rejections Surge in Texas, With Signs of a Race Gap, N.Y. Times (March 18, 2022), https://www.nytimes.com/2022/03/18/us/politics/texas-primary-ballot-rejections.html.

[32] Klain et al., *supra* note 13; Chen et al., *supra* note 14.

[33] *See* Vandermaas-Peeler et al., *supra* note 15; *see also* Henninger et al., *supra* note 15; Kurth et al., *supra* note 15.

[34] Shaw, *supra* note 17; Field et al., *supra* note 17.

[35] Merivaki & Smith, *supra* note 18; Field et al., *supra* note 17.

[36] Kevin Morris & Peter Miller, *Nonwhite Voters at Higher Risk of Being Dropped from Arizona's Mail Ballot List*, Brennan Center for Justice (Aug. 11, 2022), https://www.brennancenter.org/our-work/analysis-opinion/nonwhite-voters-higher-risk-being-dropped-arizonas-mail-ballot-list.

and present has been heightened by the existence of racial discrimination in other aspects of social, economic, and political life.[37]

Finally, as noted above, many voting laws continue to target the practices and procedures that voters of color have used successfully to cast a ballot. The proliferation of such laws is another important fact that militates toward the need to enact greater federal protections of the right to vote.

d. Is it correct that any qualified citizen who wants to cast a ballot in Texas can and has "ample opportunity" to do so? Can you provide additional detail about barriers to voting that qualified citizens in Texans faced in seeking to cast their ballots?

It is not true that any qualified citizen who wants to cast a ballot in Texas has "ample opportunity" to do so. Texas was recently ranked the 46th hardest state in the nation to vote as a result of the various barriers and restrictions that the state has implemented for their voters; this was not a surprise to LDF and our partners in the civil rights community.[38] With limited access to absentee voting, no absentee ballot cure process, stringent voter identification laws, accessibility issues, and several reported instances of voter intimidation, Texas voters face significant barriers to the franchise. In addition, unlike 42 states and the District of Columbia, Texas denies eligible citizens the opportunity to register to vote online.[39]

Examples of these barriers were highlighted in the 2020 election. In Tarrant County, several incidents were reported in which caravans of individuals bedecked in campaign attire displayed long guns near polling places, potentially intimidating and harassing voters.[40] Fortunately, LDF and other civil rights partners were able to intervene, resulting in the implementation of alternative polling locations. Individual experiences also highlight examples of barriers to voting that qualified citizens in Texas have faced in recent elections. As highlighted in LDF's *Democracy Defended* report on the 2020 election, because of Texas's restrictive absentee-voting rules, one individual had to leave her hospitalized husband's side and drive to the election administrator's office to request an emergency ballot for him—then deliver the application to her husband, receive a doctor's certification of his illness, and drive back to the office in order for her husband to vote.[41] In addition, one 93-year-old voter in Texas was denied the opportunity to include a change-of-address form with her absentee ballot over the phone under the false premise that Texas makes it illegal for voters to correct their ballots, even though no Texas law forbade such curing opportunities.[42] These examples and others make it clear that

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37 *See, e.g.*, *Katzenbach*, 383 U.S. at 310–11 & nn.9–10 (observing that the effectiveness of literacy tests at blocking Black Americans from voting resulted, in significant part, from the pervasiveness of racial discrimination in education).

38 Scot Schraufnagel, Michael J. Pomante II & Quan Li, *Cost of Voting in the American States: 2022* (21 Elec. L. J. 2022), https://www.liebertpub.com/doi/epdf/10.1089/elj.2022.0041.

39 Nat'l Conf. of State Legislatures, *Online Voter Registration* (Sept. 22, 2022), https://www.ncsl.org/research/elections-and-campaigns/electronic-or-online-voter-registration.aspx.

40 LDF, *supra* note 9, at 130.

41 *Id.* at 132.

42 *Id.* at 134.

qualified citizens in Texas face continued barriers to casting their ballot, which are likely to be exacerbated in the 2022 election.

4. **There was testimony at the hearing that minority voters "registered up to the level of the rest of the country . . . decades ago." Is that accurate?**

As in the context of voter turnout, statistics on voter registration published by the Census Bureau disprove this claim. In fact, according to the Census Bureau, voter-registration disparities between white citizens and Black, Latino, Asian, and other citizens persist at a nationwide average of over 11 percentage points as of November 2020.[43] According to the same data tables, 76.5% of non-Hispanic white U.S. citizens were registered to vote as of November 2020.[44] By contrast, only 68.9% of Black citizens, 61.1% of Latino citizens, and 63.8% of Asian American citizens were registered to vote as of November 2020.[45] Moreover, as discussed above in response to Question 1, registration statistics and turnout rates do not tell the full story of the unacceptable barriers Black voters and other voters of color must often overcome to exercise the most fundamental right of citizenship.

5. **Senators and witnesses at the hearing assailed third-party ballot collections efforts as "ballot harvesting" and asserted that the practice invites fraud, undermines integrity of and confidence in elections, and that prohibiting it, as the Arizona law at issue in Brnovich did, would protect the right to vote.**

    a. **Are these statements concerning purported harms and risks of third-party ballot collection accurate?**

These statements are unsubstantiated. In fact, third-party ballot collection efforts are a lifeline for many voters, including voters of color. Like third-party registration drives, they also implicate constitutional protections for speech and association under the First Amendment, as well as protections on the right to vote under the First and Fourteenth and Amendments.[46]

    b. **Why is third-party ballot collection a critical tool to expanding access to the franchise, particularly in minority communities?**

Third-party ballot collection is especially important for Black voters, who are less likely to have access to a vehicle than other voters,[47] and may face more difficulty returning ballots without assistance from their church, local community organization, or another trusted source of assistance. Third-party ballot collection is also particularly important for voters who have limited mobility, including older voters or voters with disabilities. These voters are more likely to rely

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43 U.S. Census Bureau, *supra* note 1 (showing that 76.5% of U.S. citizens identifying as "non-Hispanic white alone" were registered to vote as of November 2020, as compared to 65.0% of all other U.S. citizens).

44 *Id.*

45 *Id.*

46 *League of Women Voters of Fla. v. Browning*, 863 F. Supp. 2d 1155, 1158-59, 1164 (N.D. Fla. 2012) (making these points in the analogous context of third-party registration drives).

47 *Car Access*, Nat. Equity Atlas (2019), https://nationalequityatlas.org/indicators/Car_access#/.

on trusted third parties, such as home health aides or nonprofit organizations, to help them return their ballots.

c. How do prohibitions on third-party ballot access disproportionately and discriminatorily impact minority communities?

Third-party ballot access, including third-party ballot collection and delivery and community ballot collection, is a particularly important option for voters who face barriers in accessing voting locations. Restrictions on third-party ballot access tend to culminate in two types of limitations: restrictions on who can assist voters in collecting and returning ballots, and limits on how many ballots an individual can collect. For the reasons explained above, restrictions or prohibitions on third-party ballot collection activities will likely diminish access to the franchise for the most vulnerable voters, including racial minority voters, first-time voters, voters with rigid work or care-taking schedules, and voters who are disabled, elderly, or have limited access to transportation.

Simply put, third-party ballot access benefits minority communities. For Black and other racial minority households, who are less likely to have access to a car than white households,[48] such third-party initiatives—often organized by entities such as churches, nonprofits, or civic organizations—assist in surmounting transportation barriers to the ballot and provide a lifeline to the franchise. A similar importance exists for disabled voters, who face impediments returning their ballots due to inadequate voting accommodations and access to transportation.[49] Elderly voters are also more likely to use mail ballots and often face similar impediments in returning their ballots due to mobility issues.[50]

As the Fifth Circuit found in a voting rights case arising in Mississippi, and as is still true today, Black workers "predominate in blue-collar and service worker positions in which they are likely to be working for an hourly wage and are less likely to be able to take off from work to register to vote."[51] Black voters employed in these positions often face barriers in taking time off to vote or to submit their absentee ballots.[52] Ballot collection initiatives by trusted third parties enable individuals' ballots to reach their destination safely and be counted, even if the individual casting the ballot is unable to submit it themselves. In another example, a case arising in Montana indicates that third-party ballot access initiatives are particularly important for Native American voters who may live further away from county election offices than other members of

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48 *Id.*

49 Abigail Abrams, *Mail Voting Boosted Turn Out for Voters with Disabilities. Will Lawmakers Let it Continue?*, TIME (Feb, 18, 2021, 12:24 PM), https://time.com/5940397/2020-mail-voting-accessibility/

50 Charles Stewart III, *Some Demographics on Voting By Mail,* Cal Tech Election Updates (Mar. 20, 2020), https://electionupdates.caltech.edu/2020/03/20/some-demographics-on-voting-by-mail/; Michalina Kubicka, *Barrier to Access: Older Voters,* The Voter Formation Project, https://www.voterformationproject.org/post/barriers-to-access-older-voters.

51 *Mississippi State Chapter, Operation Push v. Allain*, 674 F. Supp. 1245, 1256 (N.D. Miss. 1987), *aff'd sub nom. Mississippi State Chapter, Operation Push, Inc. v. Mabus*, 932 F.2d 400 (5th Cir. 1991).

52 Vandermaas-Peeler, et al., *supra* note 15 (finding that Black (16%) and Hispanic (16%) Americans are much more likely to report having trouble taking time off of work than white Americans (8%).)

the electorate and have limited access postal services.[53] The court found "evidence of increased Native American voter turnout between the 2014 and 2018 elections due to the efforts of organizations like Western Native Voice that do ballot-collection work on reservations."[54] Especially now, as numerous states implement restrictive voting laws that limit the availability of ballot drop boxes and reduce the time period during which voters may return absentee ballots, third-party ballot access functions as a critical tool to level the playing field and provide access to the ballot for voters whose voices might otherwise be excluded from the democratic process.

6. **Testimony at the hearing asserted that Section 2 "demands that race not be taken into account" when setting voting laws and procedures," and that Section 5 by contrast demands states take race into account when adopting voting changes, such as those that result from redistricting. That testimony appears to be arguing that Section 2 and Section 5 are sometimes at odds with one another. Is this an accurate statement of the law? Please explain.**

This statement of the law is inaccurate. The suggestion that Section 2 and Section 5 are somehow at odds with each other is disproven by the texts of the statutes and their longstanding interpretation by federal courts, including the Supreme Court. By its text, Section 2 forbids 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."[55] It is violated where "the totality of circumstances" reveals that "the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by [a protected group] in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice."[56] As interpreted and applied by the Supreme Court and other courts, Section 2 authorizes and indeed *requires* the consideration of race under certain circumstances.

The highly structured framework set forth by the Supreme Court to evaluate Section 2 claims in *Thornburg v. Gingles* first demands proof of three objective "preconditions," namely, that: (1) a minority group is "sufficiently large and compact to constitute a majority in a reasonably configured district," (2) the minority group is "politically cohesive," and (3) the majority votes sufficiently as a bloc to enable it to usually defeat the minority group's preferred candidate.[57] If these preconditions are established, a court considers several factors identified by the Supreme Court, based on the guidance of the Senate Judiciary Committee report accompanying the 1982 amendments to Section 2, that are indicative of the totality of circumstances to determine whether the political process is equally open to minority voters.[58] Where evidence shows that a state's redistricting plan, for example, in combination with racial polarization and other factors evincing discrimination, denies minority voters an equal opportunity to elect their preferred candidates, and that the creation of an additional majority-

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53 *Driscoll v. Stapleton*, 473 P.3d 386, 393 (Mont. 2020).

54 *Id.*

55 52 U.S.C. § 10301(a).

56 *Id.* at §10301(b).

57 *Thornburg v. Gingles*, 478 U.S. 30, 48-52 (1986).

58 *Id.* at 36-38.

minority district is consistent with traditional redistricting principles, Section 2 may require the drawing of a district that provides voters of color an equal opportunity to participate in the political process and elect candidates of choice.[59] In short, it is wholly inaccurate to claim that Section requires "race-neutral" decision-making or demands that race not be taken into account.[60]

Section 5 employs a "retrogression" standard, under which the Attorney General or a court is instructed to deny preclearance to "[a]ny voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting that has the purpose of or will have the effect of diminishing the ability of any citizens of the United States on account of race or color" or of language minority status.[61] This means that if a law subject to preclearance would diminish or lead to a retrogression in the electoral power of racial minority voters, the law may be blocked from going into effect.[62] The two provisions were designed work together—in the words of one canonical source, "Section 2 is a legal *sword* that enables minority voters to improve their electoral position, while Section 5 is a *shield* that prevents minority voters' position from worsening."[63] Thus, while the standards of Section 2 and Section 5 are distinct, they are clearly compatible and complementary—and neither statute prohibits the appropriate use of race.

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59 *Wis. Legislature v. Wis. Elections Comm'n*, 142 S. Ct. 1245, 1248-51 (2022) (per curiam).

60 Nor does the Fourteenth Amendment to the U.S. Constitution forbid the use of race in redistricting. Instead, the Fourteenth Amendment requires that the use of race as a *predominant* consideration in redistricting satisfy strict scrutiny—that is, that the use of race as a predominant consideration must be narrowly tailored to achieve a compelling state interest. Compliance with the VRA is such a compelling state interest, as lower courts have held and the U.S. Supreme Court has long assumed. *E.g.*, *Bush v. Vera*, 517 U.S. 952, 977 (1996) (collecting cases); *see Perez v. Abbott*, 253 F. Supp. 3d 864, 898 (W.D. Tex. 2017) ("Compliance with § 2 of the VRA constitutes a compelling governmental interest."); *Goosby v. Town Bd. of Town of Hempstead, N.Y.*, 981 F. Supp. 751, 761 (E.D.N.Y. 1997), *aff'd*, 180 F.3d 476 (2d Cir. 1999) ("hold[ing] that remedying a violation of Section 2 of the Voting Rights Act of 1965 is a compelling state interest"). Thus, when a state's use of race is narrowly tailored to comply with the VRA, meaning that the state has "a strong basis in evidence" that provides "good reason to believe" its use of race is necessary to comply with the VRA, strict scrutiny is satisfied. *Alabama Legislative Black Caucus v. Alabama*, 575 U.S. 254, 278 (2015).

61 52 U.S.C. § 10304(b).

62 *See Beer v. United States*, 425 U.S. 130, 141 (1976) ("[T]he purpose of § 5 has always been to insure that no voting-procedure changes would be made that would lead to a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise.").

63 Daniel H. Lowenstein, Richard L. Hasen, Daniel P. Tokaji & Nicholas Stephanopoulos, *Election Law: Cases and Materials* (6th ed. 2017).

Business Letter to Congress in Support of Voting Rights

July 14, 2021

Honorable Members of Congress:

As a 25-year-old in the spring of 1965, John Lewis, your friend and former colleague, then the chairman of the Student Nonviolent Coordinating Committee, led a march of over 600 people across the Edmund Pettus Bridge to secure the equal right to vote in this country. Fortified with an uncommon courage and an unwavering conviction that America could still fulfill its highest ideals, he was met that day with a force that left him and other marchers bloodied but they remained determined. In the months that followed, Congress passed the Voting Rights Act of 1965 with the strongest protections against voter discrimination in American history, altering how elections would be run in this nation for the next five decades.

In the 2020 election, Americans came together to work the polls, get out the vote, and cast their ballots in spite of the pandemic, achieving historic levels of voter participation. The business community is proud of our role in encouraging our employees, customers, and communities to exercise their right to vote and have a say in our government. Widespread civic engagement is essential to a stable society and robust economy. Our democracy is strongest, as Congressman Lewis knew, when we all can vote.

At the same time, the election highlighted deep inequities in how our elections are run. Despite decades of progress, impediments to exercising the right to vote persist in many states, especially for communities of color. We need federal protections to safeguard this fundamental right for all Americans.

To this end, the undersigned group of U.S. employers urges Congress to address these problems through legislation amending the Voting Rights Act of 1965. Last Congress, the House of Representatives passed the John Lewis Voting Rights Advancement Act. We support the ongoing work of both the House and the Senate to enact legislation amending the Voting Rights Act this Congress.

The Voting Rights Act of 1965, long considered the crown jewel of civil rights legislation, contained provisions that prevented the adoption of discriminatory rules that limited access to voting in states with histories of voting discrimination. Those provisions were reauthorized four times by overwhelming bipartisan majorities in the U.S. Congress, and every time the VRA has been reauthorized it has been signed into law by a Republican president. Upon signing the 1982 reauthorization into law, President Reagan said that "Citizens must have complete confidence in the sanctity of their right to vote, and that's what this legislation is all about. It provides confidence that constitutional guarantees are being upheld and that no vote counts more than another."

In 2013, the Supreme Court in Shelby County v. Holder struck down those provisions in a 5-to-4 decision as unconstitutional. The effects were immediate. Within days, states formerly covered by the law began passing legislation to make voting more difficult with burdensome voter ID requirements, polling place closures, reductions in early voting, the elimination of same-day voter registration, and purging voter rolls, all of which disproportionately affected communities of color. In handing down its ruling, the Supreme Court invited Congress to update the coverage formula to ensure the law is responsive to current voting conditions. Congressional action on that invitation is long overdue.

Congress needs to amend the Voting Rights Act to restore necessary safeguards by updating the Voting Rights Act's coverage formula to prevent voting discrimination, as well as establish a more transparent and accountable system for states to report election law changes. Legislation amending the Voting Rights Act must help ensure that voters of color who remain the targets of voter suppression have equal and unfettered access to the democratic process.

Representative John Lewis called the right to vote "the most powerful non-violent tool we have in our democratic society." He was a fierce advocate of the Voting Rights Advancement Act (HR4) because our country is in an "ongoing struggle to redeem the soul of America, and we're not there yet." As we approach the first anniversary of Congressman Lewis' passing, his life's work to strengthen American democracy must now be ours.

While each of our companies is unique, we are united in the belief that every American deserves a voice in our democracy. It is our government's role to ensure voting is accessible to all. We urge Congress to add to the legacy of Representative Lewis by passing Voting Rights Act legislation that assures that every voice is heard.

Respectfully,

Signatory companies & business organizations

Companies

500 Startups
Adasina Social Capital
Airbnb
Amalgamated Bank
Amazon.com
Anji Mountain
APCO Worldwide
Apple
Arcweb Technologies
Asana
Aspen Skiing Company
Avocado Green Brands
Azavea
Bad Robot Productions
Beautycounter
Beepboop
Ben & Jerry's Homemade
Beneficial State Bank
Best Buy
The Blueprint Strategy Group
Bountiful Books
Box
Boyne Resorts

Burton
Capricorn Investment Group
CareHero
CareVet
Chicory Wealth
Cisco
Clif Bar & Company
Clover Sonoma
The Collab Lab
Commercial Property Services
Compose[d]
Countable
CREDO Mobile
CredSpark
Cummins
CustomerCount
Danone North America
Dave Gragg Agency
Direct Agents
Doing Good Works
DoorDash
Dr. Bronner's
DSM North America
ECOS
Edelman
Edthena
Empowered Education
Etsy
Eventbrite
Facebook
Flex Fusion Studios
For the Win
Good Energy Guild
Google
Greenlight Financial Technology
H&M USA
Hannon Armstrong
Harry's
Heart Centered Psychotherapy
Herra Productions
The Hershey Company
HigherRing
Hims & Hers
HP
Ibis Communications
Impax Asset Management
Infosys
Initiate Government Solutions
Intel Corporation
Invitae
Jonathan Rose Companies
Juniper Networks
JustLaws
Keap Co.
KEEN
Key Medium
L. M. Lewis Consulting
Leading Change Consulting & Coaching
Legacy Vacation Resorts
Levi Strauss & Co.
Lime
Litwin Law
Live Well Brands
LM Studio
Lyft
M1PR
Macy's
Mailchimp
Mars, Incorporated
MegaFood
Microsoft Corporation
Mighty Cricket
MobiusVP
MOM's Organic Market
Mondelez International
MPAC Healthcare
Namaste Solar
Nerdy Diva
Nestlé USA
Nextdoor
Oak Street Health
Okta
Optimize International
Patagonia
PayPal
PepsiCo, Inc.
Pinterest

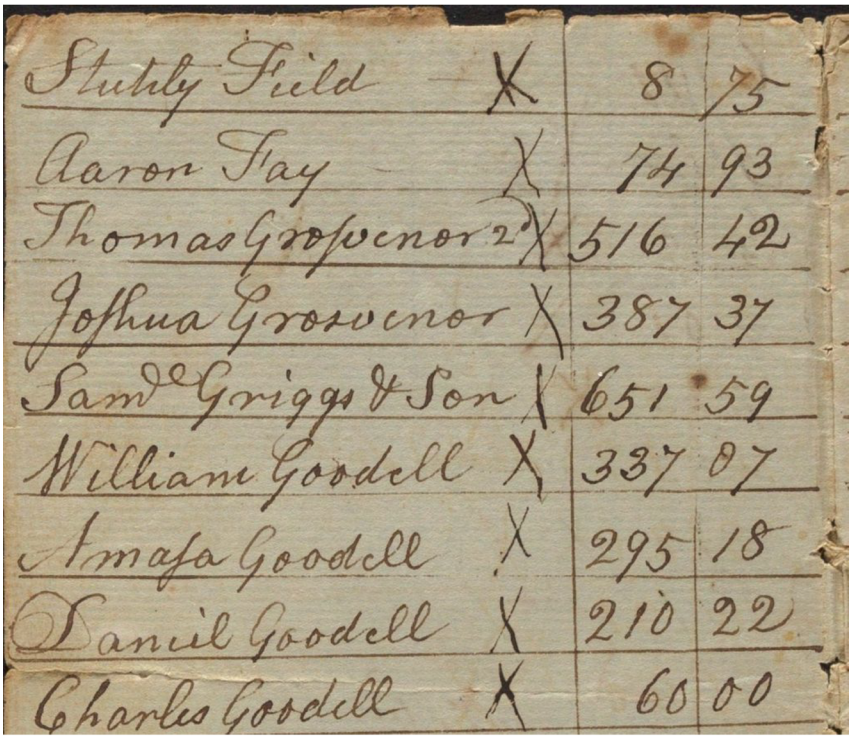
PrivacyWall
Propr Design
Public Good
Puente Strategies
Randa Apparel & Accessories
Raven + Lily
REI Co-op
Reimbursify
RenewComm
Rivanna Natural Designs
RKT Technology
Salesforce
Salt Palm Development
Sameem Afghan Restaurant
Sealaska Corporation
ServiceNow
Seventh Generation
Shipt
Shoshana Technologies
Sierra Nevada Brewing Co
Sing Out, Louise! Productions
Smilow + Mathiesen
Sony Music Group
Southeast Tourism Society
Square
Starbucks
Taizu
Target
TAXA
Teddy Stratford Apparel
Tesla
Tiffany & Co.
Traditional Medicinals
Trillium Asset Management
Tripadvisor
TSquared Consulting
Uncommon Bold
Under Armour
Unilever USA
Universal Music Group
UserTesting
Vail Resorts
Vault.co
Verify Venture Studio
W.S. Badger Company
Warby Parker
Warner Music Group
Watson Agency
wearwell
Wellington Flowers and More
Whisk: a Sustainable Bakeshop
Xfund
Zillow
Zoom

Business Organizations

Black Economic Alliance
Business for America
Chamber of Progress
Florida For Good
Small Business Majority
Sustainable Food Policy Alliance
Mainstreet Alliance
Indianapolis Urban League
TechNet
T-REX Technology Entrepreneur Center
West Philadelphia Corridor Collaborative

The Connecticut Poll Tax

November 9, 2019 • Law, Politics and Government, The State



Pomfret [Abington?], Tax list - UConn Library, Archives & Special Collections, Connecticut Digital Archive

By Edward T. Howe

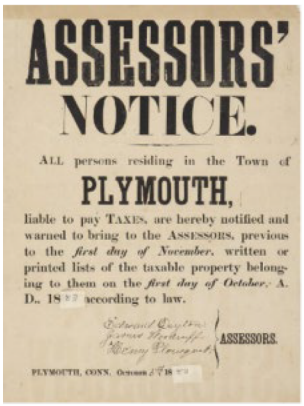
The Connecticut poll tax, in its various forms, lasted for almost 300 years (1649-1947). During its use, it encompassed four different variants: the original poll tax, a military commutation tax, a personal tax, and an old age assistance tax. In each case, the state levied a fixed amount on each person liable for payment. The tax, considered regressive, fell disproportionately on lower-income groups.

Original Poll Tax (1649-1909)

In preparation for war, *The Articles of Confederation of the United Colonies of New England* (1643), which included the Connecticut and New Haven colonial governments, stipulated that "all charges of the war be born by the poll." Although no war ensued, Massachusetts enacted a law in 1646, which included the first poll tax in the colonies (to help finance colonial and local expenditures).

By 1649 the New Haven colony also used a poll tax, becoming the second colonial government to do so. *The Code of 1650, Being a Compilation of the Earliest Laws and Orders of the General Court of Connecticut*, compiled by Roger Ludlow, specified that all male inhabitants 16 years and older (except magistrates and elders of the churches) faced an assessment of "two shillings sixpence by the head." By 1651 separate lists of "ratable persons and estates" were drawn up in each town by the assessors in both the Connecticut and New Haven colonies. These lists were forwarded to the colonial government for the compilation of the aggregate value of all taxable property in the colony (known as the "Grand List").

Local taxes based on the Grand List helped to generate revenue for church, school, and town expenditures. Throughout the colonial era, the combined peacetime poll and property tax burden – payable at times in wampum, "in kind" (vegetables and meat), or money – for colonial and town governments was relatively light, even with compliance problems and numerous exemptions. This system of taxation, with various changes, continued into statehood.



ASSESSORS'
NOTICE.

ALL persons residing in the Town of

PLYMOUTH,

liable to pay TAXES, are hereby notified and warned to bring to the ASSESSORS, previous to the *first day of November*, written or printed lists of the taxable property belonging to them on the *first day of October*, A. D., 18 according to law.

ASSESSORS.

PLYMOUTH, CONN. October

Requests lists of taxable property from residents of Plymouth, 1883. – Connecticut Historical Society, Connecticut Digital Archive

Military Commutation Tax (1847-1909)

Connecticut enacted a second type of poll tax (the military commutation tax) in 1847. It stated that all able-bodied men between 18 and 35 years had to register for military duty, with certain exemptions (e.g., ministers and physicians). All men, intent on avoiding military service, had the opportunity to pay a one-dollar tax in commutation (i.e., replacement) of such duty, which the town treasurer forwarded to the state for the support of the militia. Military personnel were exempt from the poll tax during their period of service and after ten years of service were exempt from payment altogether. For a long time both the poll and military commutation taxes received criticism because of inconsistency between officials in listing those liable for the taxes, uneven enforcement of collections among the towns, and a need for a uniform tax rate to replace the existing levies.

The Personal Tax (1910-1935)

In 1910, the personal tax, enacted as a replacement for the aforementioned taxes, became the third form of poll tax. It stated that every man between 21 and 60 years of age had to pay a tax of two dollars for town and state purposes. City and town officials added the tax to the annual property tax bill of liable males.

Instead of the military commutation tax, 85 percent of the cost of supporting the National Guard came from the towns in proportion to their Grand Lists, with the remainder from state funds not otherwise appropriated. The new tax law eliminated the discrepancy between the one-dollar poll tax and the two-dollar military commutation tax, and reduced the age limit to 60 from the previous poll tax requirement of 70. Revenues subsequently rose as compliance with the new tax law improved. After achieving the right to vote in 1920, women became subject to the tax a year later.



The Personal Tax, enacted in 1910, helped cover the cost of supporting the National Guard. (Connecticut National Guard: Troop B cavalry crossing the Bulkeley Bridge, 1910-1919) – Connecticut Historical Society, Connecticut Digital Archive

The Old Age Assistance Tax (1936-1947)

The old age assistance tax, the fourth and final version of the poll tax, was enacted during the Great Depression to aid the elderly. The new law replaced the two-dollar personal tax with a three-dollar head tax levied on men and women between the ages of 21 and 46 years. Any person 65 years and older with insufficient means of support, and having no one legally liable to help them, became eligible for an original payment not to exceed seven dollars a week.

Connecticut, facing increasing revenue needs after World War II, abolished both the old age assistance tax and the state tax on towns based on the Grand List and replaced them with the sales and use tax in 1947. Future old-age benefit payments came from the General Fund of the state which relied heavily on new sales tax revenues. Thus, after providing the state and (to a lesser extent) localities with a source of revenue for almost 300 years, the poll tax finally passed into Connecticut history.

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THE DELAWARE POLL TAX CASE.

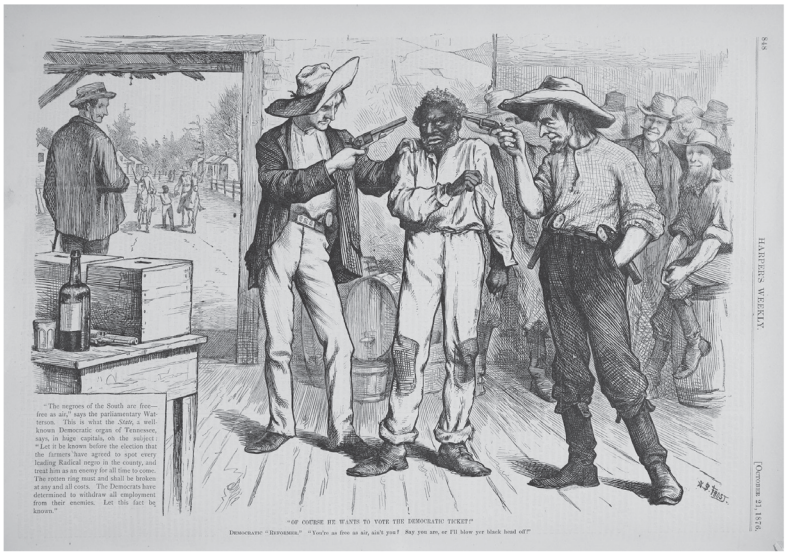
WILMINGTON, Del., Jan. 24.—In the Court of Errors and Appeals at Dover to-day the opinion in the case of John M. Freiszleben against Serech F. Shallcross and others was handed down. This is the celebrated suit involving the constitutionality of the poll tax collection law of 1873. The suit was instituted by Senator Higgins in the Superior Court and argued last June, Senator Gray being one of the counsel for respondent. By agreement, after argument, the issues raised were referred to the Court of Errors and Appeals, to be passed upon by a full bench in the State's highest tribunal.

The nominal appellant, Freiszleben, possessing the other qualifications of a voter, had been placed on the delinquent list for non-payment of his poll tax of 1883 and thereby under the law rendered ineligible to qualify as a voter until 1887. His claim set forth in effect that he had been disfranchised for 1886, contrary to the provisions of the State Constitution.

The court, in to-day's opinion, denies this and affirms the constitutionality of the law as an enactment clearly within the constitutional power of the Legislature as an appropriate and legitimate exercise of the taxing power, and holds that the electoral franchise is not an indefeasible right of citizenship, but a privilege conditioned upon the payment of a tax.

The New York Times
Published: January 25, 1890
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The Truth About Jim Crow



The American Civil Rights Union

Introduction

The Jim Crow era ended nearly 50 years ago with the passage of the 1965 Voting Rights Act, which restored African-Americans to full citizenship in the United States after a century of legalized oppression. As the era fades deeper and deeper into the past, Americans are rapidly forgetting the historical realities of Jim Crow. Most of us weren't even born when Jim Crow mercifully came to an end. Therefore, most of us never personally experienced one of the ugliest and most shameful chapters in American history.

Jim Crow was an era in which whites, mostly but not always in the South, used methods sometimes legal, sometimes illegal, often deadly, but always immoral, to maintain political and cultural domination over blacks. Blacks were reduced to second-class citizenship. They were denied the right to vote, kept separate from whites in most phases of life, and in general, treated as if they were subhuman, in an effort to justify white supremacy and keep the black population under tight control.

This brief paper is not intended to be an exhaustive academic treatise about the Jim Crow era. Instead, its purpose is to reacquaint readers with the most important aspects of Jim Crow, by addressing the Jim Crow era's white supremacist culture, how white supremacy was enforced, and the politics of the era. The public should come away understanding the three most important facts about Jim Crow: Jim Crow was Dehumanizing; Jim Crow was Deadly; and Jim Crow was Democratic.

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I. Jim Crow was Dehumanizing:
The Culture of Jim Crow

Jim Crow was an entire way of life dedicated to asserting and maintaining the superiority of whites over blacks. The Jim Crow system dominated the southern and border states, though Jim Crow laws and attitudes could be found in the Northeast, the Midwest and the West as well. In the South, blacks were systematically oppressed and deprived of their constitutional rights, and strict segregation of the races was aggressively enforced. Social institutions were structured to reinforce the organizing principle of the culture: that blacks were inherently inferior to whites, in effect subhuman. In consequence, blacks and whites were never supposed to relate to one another as equals. The principle of black inferiority pervaded every aspect of life, from status before the law to the voting franchise, from education to access to public accommodations to entertainment and even to social etiquette.

Jim Crow's Historical Setting

For all practical purposes, the Civil War ended with Confederate commander Robert E. Lee's surrender on April 9, 1865. Slavery ended in practice on June 19, 1865, when the Union Army reached Galveston and ordered the freeing of the 200,000 slaves in Texas. As the postwar Reconstruction period (1865–1877) began, Federal forces occupied the South. Blacks began to organize politically and campaign for equal legal and political status as early as 1865, forming equal rights movements throughout the South. The 13th Amendment to the Constitution ratified on December 18, 1865, banished slavery in the United States.

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Following Republican Abraham Lincoln's assassination, however, his successor, Democratic President Andrew Johnson, allowed Southern states to implement "black codes," which restricted and controlled the newly freed slaves. The political tide turned with Republican victory in the 1866 Congressional elections. The Republicans fought to elevate the newly emancipated black slaves to full citizenship, successfully engineering two more constitutional amendments. The 14th Amendment, ratified on July 28, 1868, extended equal protection of the laws to former slaves, and the 15th Amendment, ratified on March 30, 1870, guaranteed that all blacks, including former slaves, had the right to vote.

The cumulative effect of these constitutional amendments was to make former slaves fully equal American citizens in the eyes of the law. Because most Southern states had substantial black populations, black candidates began to win state and local elections. The first black man to be seated in the House of Representatives, Joseph Rainey of South Carolina, was elected in 1870. In the same year, Hiram Rhodes Revel of Mississippi became the first black U. S. Senator. "In all, 16 African Americans served in the U.S. Congress during Reconstruction; more than 600 more were elected to the state legislatures, and hundreds more held local offices across the South."[1] Everyone was a Republican.



Blacks elected to the U.S. Congress in 1870 and 1872. Hiram Rhodes Revel is on the far left, and Joseph Rainey is second from the right.

Backlash: the Beginning of Jim Crow

Growing black political power was viewed with hostility by whites, who had ruled the roost until 1865. But even more threatening was the growth of black social status. As blacks began to interact more frequently and more equally with whites, many whites feared that interracial marriages could become commonplace, and "would produce a mongrel race which would destroy America."[2] The stereotype that black males were sexually uncontrollable and predatory was ubiquitous, such that many white women feared being raped. To avoid these perceived dangers, many whites felt social contacts between the races had to be kept to an absolute minimum, and white political dominance had to be reestablished.

The Reconstruction era ended with the Compromise of 1877, which resolved the disputed 1876 presidential election. Democrats controlled the House of Representatives, which gave them the power to prevent the inauguration of the new president. The Democrats agreed to allow Republican Rutherford B. Hayes to enter the White House in return for the withdrawal of the Federal troops still occupying the South. The troops were the principal guardians of the safety of the Republican governments in Southern states, and when they departed, many white Republicans left the South as well.

The South was left in the hands of the Democratic Party, which considered itself the "party of the white man."[3] Democrats established so-called "redeemer governments" throughout the region, and began to reassert white supremacy by passing laws that infringed upon the rights of blacks and enforced strict segregation.

Black legal and political rights quickly deteriorated. "[A]fter 1877, most lost the right to vote or to hold government positions."[4] The 1875 Civil Rights Act, which banned discrimination based on race, was overturned by the U.S. Supreme Court in 1883.

In 1890, the Louisiana General Assembly passed a law requiring segregated railroad cars. In 1896, this legalized segregation was upheld by the U.S. Supreme Court in the Plessy v. Ferguson case. In its infamous *Plessy* decision, the Court established the principle that public accommodations could be "separate but equal." In 1898, the Supreme Court went further in its *Williams v. Mississippi* decision, upholding a Mississippi law intended to prevent blacks from voting.

Once discriminatory laws were approved in principle by the Supreme Court, such laws spread quickly throughout the South. According to the Civil Rights Foundation, "Given the green light, Southern states began to limit the voting right to those who owned property or could read well,

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to those whose grandfathers had been able to vote, to those with 'good characters,' to those who paid poll taxes. In 1896, Louisiana had 130,334 registered black voters. Eight years later, only 1,342, one percent, could pass the state's new rules.[5]

Segregation

Racial segregation was the very heart of Jim Crow, and the Jim Crow era was marked by the adoption of explicitly racist laws intended to keep blacks and whites away from each other everywhere from ballparks to graveyards. Black access to public accommodations like restaurants, buses and trains was restricted, and blacks were forced into separate (and inferior) schools. Laws decreed segregation in areas ranging from the profound to the petty, as the following list illustrates[6]:

Amateur Baseball: "It shall be unlawful for any amateur white baseball team to play baseball on any vacant lot or baseball diamond within two blocks of a playground devoted to the Negro race, and it shall be unlawful for any amateur colored baseball team to play baseball in any vacant lot or baseball diamond within two blocks of any playground devoted to the white race." (Georgia law)

Barbering: "No colored person shall serve as a barber [to] white women or girls." (Georgia law)

Beer and Wine Sales: "All persons licensed to conduct the business of selling beer or wine...shall serve either white people exclusively or colored people exclusively and shall not sell to two races within the same room at any time." (Georgia law)

Burial: "The officer in charge shall not bury, or allow to be buried, any colored persons upon ground set apart or used for the burial of white persons." (Georgia law)

Buses: "All passenger stations in this state operated by any motor transportation company shall have separate waiting rooms or space and separate ticket windows for the white and colored races." (Alabama law)

Hospitalization: "The Board of Control shall see that proper and distinct apartments are arranged for said patients [in a mental hospital], so that in no cases shall Negroes and white persons be together." (Georgia law)

Libraries: "The state librarian is directed to fit up and maintain a separate place for the use of the colored people who may come to

the library for the purpose of reading books or periodicals." (North Carolina law)

Marriage: "All marriages between a white person and a negro, or between a white person and a person of negro descent to the fourth generation inclusive, are hereby forever prohibited." (Florida law)

Marriage: "All marriages of white persons with Negroes, Mulattos, Mongolians, or Malaya hereafter contracted in the State of Wyoming are and shall be illegal and void." (Wyoming law)

Nursing: "No person or corporation shall require any White female nurse to nurse in wards or rooms in hospitals, either public or private, in which negro men are placed." (Alabama law)

Prison: "The warden shall see that the white convicts shall have separate apartments for both eating and sleeping from the negro convicts." (Mississippi law)

Restaurants: "It shall be unlawful to conduct a restaurant or other place for the serving of food in the city, at which white and colored people are served in the same room, unless such white and colored persons are effectually separated by a solid partition extending from the floor upward to a distance of seven feet or higher, and unless a separate entrance from the street is provided for each compartment." (Alabama law)

Schools: "Separate rooms [shall] be provided for the teaching of pupils of African descent, and [when] said rooms are provided, such pupils may not be admitted to the school rooms occupied and used by pupils of Caucasian or other descent." (New Mexico law)

Schools: "[The County Board of Education] shall provide schools of two kinds; those for white children and those for colored children." (Texas law)

Teaching: "Any instructor who shall teach in any school, college or institution where members of the white and colored races are received and enrolled as pupils for instruction shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined..." (Oklahoma law)

Toilets: "Every employer of white or negro males shall provide for such white or negro males reasonably accessible and separate toilet facilities." (Alabama law)

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Voter Denial

Keeping blacks out of the polling booth was essential for maintaining white political dominance. Blacks were denied the franchise in many ways. Dr. Russell Booker of America's Black Holocaust Museum has identified eight methods used to deny blacks the right to vote[7]:

All-white primary elections: In the United States, there are usually two rounds of elections: first the primary, then the general. In the primary, Republicans run against Republicans and Democrats run against Democrats. In the general election, the winner of the Republican primary runs against the winner of the Democratic primary. The Republican or Democrat who gets the most votes is elected.

In the South from about 1900 to about 1960, the Democratic candidates usually won. (See the exhibit Political Parties in Black and White to learn the reason for this.) Republicans were almost never elected, especially in the Deep South. *This means that the Democratic primary election was usually the only election that mattered.*

African Americans were not allowed to vote in the Democratic primary elections. White Democrats said the Democratic Party was a "club" and did not allow black members. So blacks could not vote in the only elections that mattered.

Former prisoners: People who had gone to prison were often not allowed to vote. Blacks were very often arrested on trumped-up charges or for minor offenses. Sometimes, white owners of mines, farms, and factories simply needed cheap labor, and prisons provided it. This law kept many more blacks from voting than whites.

Grandfather clause: People who could not read and owned no property were allowed to vote if their fathers or grandfathers had voted before 1867. Of course, practically no blacks could vote before 1867, so the grandfather clause worked only for whites.

Literacy tests: Today almost all adults can read. One hundred years ago, however, many people – black and white – were illiterate. Most illiterate people were not allowed to vote. A few were allowed if they could understand what was read to them. White officials usually claimed that whites could understand what was read. They said blacks could not understand it, even if they could.

Poll taxes: In Southern states, people had to pay a tax to vote. The taxes were about $25 to $50 dollars in today's money. Many people had extremely low incomes and could not afford this tax. This poll tax applied to all people who wanted to vote – black and white. There were ways for whites to get around other laws, but not around the poll tax. Many poor whites could not vote because of the poll tax. (Others contend that grandfather clauses did, in some states, enable whites whose fathers or grandfathers had voted before 1865 to be excused from paying the poll tax.[8])

Property tests: In the South one hundred years ago, many states allowed only property owners to vote. Many blacks and whites had no property and could not vote.

Purges: From time to time, white officials purged the voting rolls. That means they took people's names off the official lists of voters. Some voters would arrive at the polls and find that they were not registered to vote. Often they could not register to vote again until after the election. Purges more often affected blacks than whites.

Violence: Blacks who tried to vote were threatened, beaten, and killed. Their families were also harmed. Sometimes their homes were burned down. Often, they lost their jobs or were thrown off their farms. Whites used violence to intimidate blacks and prevent them from even thinking about voting. Still, some blacks passed the requirements to vote and took the risk. Some whites used violence to punish those "uppity" people and show other blacks what would happen to them if they voted.

According to the Veterans of the Civil Rights Movement, literacy tests often went far beyond simple tests of literacy[9]:

> Prior to passage of the federal Voting Rights Act in 1965, Southern (and some Western) states maintained elaborate voter registration procedures whose primary purpose was to deny the vote to nonwhites. This process was often referred to as a "literacy test." [Editor's note: in fact, many states, even states in the Northeast, had literacy tests.[10]] But in fact, it was much more than just a reading test, it was an entire complex system devoted to denying African-Americans (and in some regions, Latinos and Native Americans) the right to vote.

Veterans of the Civil Rights Movement went on to describe voter registration in Alabama[11]:

> **In Alabama, a typical registration process for an African-American citizen went something like this:**

In the rural counties where most folks lived, you had to go down to the courthouse to register. The Registrar's Office was only open every other Monday for a couple of hours, usually in the morning or afternoon. You had to take off work — with or without your employer's permission — to register. And if a white employer gave such permission, or failed to fire a Black who tried to vote, he could be driven out of business by economic retaliation from the Citizens Council.

On the occasional registration day, the county Sheriff and his deputies made it their business to hang around the courthouse to discourage "undesirables" from trying to register. This meant that Black women and men had to run a gauntlet of intimidation, insults, threats, and sometimes arrest on phony charges, just to get to the Registration Office. Once in the Registrar's Office they faced hatred, harassment, and humiliation from clerks and officials.

The Alabama Application Form and oaths you had to take were **four pages long**. It was designed to intimidate and threaten. You had to swear that your answers to every single question were true under penalty of perjury. And you knew that the information you entered on the form would be passed on to the Citizens Council and KKK.

Jim Crow's Social Etiquette

Discrimination under Jim Crow extended beyond legal status to social interactions. A complex set of rules governed the ways that blacks and whites spoke to each other, touched each other, ate with each other, even drove on the same roads. The rules were designed to reinforce the notion of black inferiority.

Sociology professor Dr. David Pilgrim, of the Jim Crow Museum of Racist Memorabilia at Ferris State University, compiled the following list of "etiquette norms"[12]:

a. A black male could not offer his hand (to shake hands) with a white male because it implied being socially equal. Obviously, a black male could not offer his hand or any other part of his body to a white woman, because he risked being accused of rape.

b. Blacks and whites were not supposed to eat together. If they did eat together, whites were to be served first, and some sort of partition was to be placed between them.

c. Under no circumstance was a black male to offer to light the cigarette of a white female — that gesture implied intimacy.



Segregated restaurant with separate entrances for whites and colored.

d. Blacks were not allowed to show public affection toward one another in public, especially kissing, because it offended whites.

e. Jim Crow etiquette prescribed that blacks were introduced to whites, never whites to blacks. For example: "Mr. Peters (the white person), this is Charlie (the black person), that I spoke to you about."

f. Whites did not use courtesy titles of respect when referring to blacks, for example, Mr., Mrs., Miss., Sir, or Ma'am. Instead, blacks were called by their first names. Blacks had to use courtesy titles when referring to whites, and were not allowed to call them by their first names.

g. If a black person rode in a car driven by a white person, the black person sat in the back seat, or the back of a truck.

h. White motorists had the right-of-way at all intersections.

Dr. Pilgrim goes on to cite Stetson Kennedy, author of the 1990 book *Jim Crow Guide*, who compiled a list of Jim Crow rules for blacks conversing with whites[13]:

1. Never assert or even intimate that a white person is lying.

2. Never impute dishonorable intentions to a white person.

3. Never suggest that a white person is from an inferior class.

4. Never lay claim to, or overly demonstrate, superior knowledge or intelligence.

5. Never curse a white person.

6. Never laugh derisively at a white person.

7. Never comment upon the appearance of a white female.

Jim Crow's Climate of Racial Hostility

White notions of racial superiority, reinforced by Jim Crow's formal laws and informal code of conduct, percolated throughout American society to create an everyday climate of overt hostility toward blacks. This climate can be illustrated by studying the derision and abuse of blacks that were common themes in the entertainment of the era.

According to Dr. Denis Mercier, until World War II, carnivals and fairs commonly featured a game called, among other things, "African Dip." The "dunking booth" is still familiar today: a person sits on a seat perched above a tank of water, and players throw balls at a target. A solid hit on the target drops the person into the water. A 1928 catalog ad for African Dip claimed that at three balls for a dime, African Dip could bring in forty or fifty dollars an hour, while thrilling the crowd.[14]

Another carnival game, "African Dodger," was far more vicious. A black man would stick his head through a hole in a canvas painted with a plantation scene, and players would throw balls at his head. "Some operators provided human targets with protective wooden helmets covered with curly hair."[15]

Abusive depictions of blacks extended to children's games, and Mercier provides several examples. The 1914 "Little Darky Shooting Gallery" came with a gun, rubber-tipped arrows, and three targets, one featuring an obese black woman. Bowling games used stereotypical black figures as pins. An 1874 jigsaw puzzle was called "Chopped Up Niggers." As late as 1940, a Michigan company marketed a toy pistol game with a "Sambo" target.[16]

Mercier observes about such games, "The unspoken message was that Blacks, unlike other people, felt no pain, so players could indulge in and enjoy aggressive assaults because no real pain was inflicted."[17]

The minstrel show, which featured white or black performers in blackface depicting stereotypical blacks, was a very popular form of entertainment



throughout the United States in the mid-1800s. The name of the main character in the original 1828 minstrel show, Jim Crow, became a common derogatory term for blacks. The popularity of minstrel shows had fallen sharply by the time the Jim Crow era began in the 1870s, but the name "Jim Crow" was eventually appropriated to identify the era. Minstrel shows, which reinforced the notion that blacks are lazy and foolish, remained fairly common throughout the United States and England into the 1950s.

Jim Crow laws and behavior codes constituted a deliberate program to dehumanize blacks. Casting blacks as subhuman was necessary in order to justify white supremacy. Through segregation, deprivation of legal rights, and belittling social customs, the lesson was driven home to blacks and whites alike: blacks were inherently inferior to whites.

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II. Jim Crow was Deadly:
The Enforcement of Jim Crow

Jim Crow laws were enforced by the police, of course, but Jim Crow social standards and voter suppression were typically enforced through extrajudicial terrorism. Blacks were commonly intimidated, assaulted, flogged, and murdered throughout the Jim Crow era. The violent enforcement of Jim Crow culture reflected the dehumanization of blacks central to the Jim Crow mindset.

Lynching

Reaction to the growing participation of blacks in society during Reconstruction was swift and savage.

Most Americans are aware of the violent acts of the 1960s Civil Rights era, like the Birmingham church bombing and the murder of Emmett Till. Many, however, do not realize these were merely a continuation of a long history of such violence, far, far worse in earlier years, that made any challenge to the political establishment extremely and personally dangerous.

According to PBS.org's Tsahai Tafari, 535 blacks were lynched in 1867 alone.[18] White Republicans were also targeted for intimidation, assault and murder.

According to Robert A. Gibson, "Most of the lynchings were by hanging or shooting, or both. However, many were of a more hideous nature:

burning at the stake, maiming, dismemberment, castration, and other brutal methods of physical torture. Lynching therefore was a cruel combination of racism and sadism, which was utilized primarily to sustain the caste system in the South. Many white people believed that Negroes could only be controlled by fear. To them, lynching was seen as the most effective means of control."[19]

Many people also imagine that lynchings were carried out by hooded men in the middle of the night, deep in the woods, and far out of sight of law enforcement. They couldn't be more mistaken. Many lynchings took place in broad daylight, right in the middle of major American cities. Lynchings were performed in public places in order to intimidate blacks, and whites working on behalf of blacks, and also to make examples of people accused of various crimes. The lynchers typically made no effort to hide their identities; they were proud of their work. Lynchings often drew large crowds, and took place in a carnival-like atmosphere. And they were not limited to states in the South. One well-known photograph records a lynching during a race riot in Duluth, Minnesota, in June 1920, of two black men accused of rape.

The Tuskegee Institute has compiled a list of lynchings by state and race from 1882 through 1968. According to Tuskegee, a total of 3,445 blacks and 1,297 whites were lynched during that portion of the Jim Crow era.[20] Tuskegee's numbers are considered understated.

Some of these murders had nothing to do with Jim Crow. More whites were lynched than blacks between 1882 and 1885, reflecting that lynching often represented rough-and-ready justice for horse thieves, cattle rustlers, and especially heinous murders and rapes, regardless of the race of the perpetrator. According to Tuskegee, between 1882 and 1968, blacks were lynched in 37 American states, and whites were lynched in 43 states. While many of these whites were criminals, others were lynched because they were Republicans challenging the Southern Democratic political establishment.[21]

Intimidation was a central purpose of lynching. In an 1899 pamphlet, Ida B. Wells-Barnett exposed the motives of the lynchers:

"During six weeks of the months of March and April just past, twelve colored men were lynched in Georgia, the reign of outlawry culminating in the torture and hanging of the colored preacher, Elijah Strickland, and the burning alive of Samuel Wilkes, alias Hose, Sunday, April 23, 1899. ... The real purpose of these savage demonstrations is to teach the Negro that in the South he has no rights that the law will enforce. Samuel Hose was burned to teach the Negroes that no matter what a white man

does to them, they must not resist. Hose, a servant, had killed Cranford, his employer [in self-defense]. An example must be made. Ordinary punishment was deemed inadequate. This Negro must be burned alive."[22]

British pastor Peter Thomas Stanford traveled to America in the 1890s to report on the state of American blacks, and asserted that the abuse of blacks under Jim Crow was among the most horrific human rights violations going on in the entire world. According to Stanford, some blacks were lynched for not knowing their place: "In the month of August, 1888, at New Iberia, Louisiana, ten Negroes were done to death for 'being too prosperous, and not behaving correctly toward white people.' Antonio Smith, Ramson Livingstone, Peter Simon, John Simon, Thomas Simon and Sam Kokee, all of them most respectable men and property owners, and four others whose names are not given, were butchered by a mob for no crime whatever."[23]

The widespread acceptance of lynching reflected the twisted moral values prevalent during the Jim Crow era. Lynchers boasted about their actions. Photographs of the horrifying spectacles were actually turned into postcards, which were sometimes delivered through the mails.

Most lynching victims were killed by hanging or bullets, but more barbarous methods were also used. Lynching victims were sometimes tortured before being killed. One famous photo depicts a thick black plume of smoke rising as John Lee was burned to death before a sizable crowd in the middle of the day, in Durant, Oklahoma, August 1911.

A black man accused of assaulting a three-year-old white girl was lynched in broad daylight in downtown Dallas in 1910. A mob of 200 or more stormed into the man's trial, seized him, and strung him up from Elks Arch, a Dallas landmark.

Lynchings were frequently festive occasions. Another well-known lynching picture shows a crowd, including several women and girls, looking on, and even smiling, during a 1935 lynching in Ft. Lauderdale. "James Weldon Johnson captured the disconcerting tone of this photo when he described the epidemic of whites lynching blacks as a 'problem of saving black America's body and white America's soul.'"[24]

An "iconic" photo depicts the 1930 lynching of Thomas Shipp and Abram Smith in Marion, Indiana. The men had been accused falsely of raping a white woman, and a mob of 10,000 people broke down the jailhouse doors to get at the victims. The photo also records members of the crowd clearly enjoying themselves.

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Lynching was the very antithesis of formal justice. A man, possibly a prison trustee, was lynched in 1960 in McDuffie County, Georgia. The ten-second "investigation" of this lynching by the Georgia Bureau of Investigation concluded he died by suicide.

The Ku Klux Klan

Jim Crow culture was enforced in part by local police, but the worst violence was perpetrated by unorganized mobs, often in white-instigated race riots, and by organized terror groups. The Ku Klux Klan was the largest and best known white supremacist organization operating during the Jim Crow era. While the Klan began as social club aping college fraternities, it quickly transformed into a full-fledged terror network. The Klan was primarily a collection of local groups. The first person recognized as the overall leader of the Klan, Confederate Lieutenant General Nathan Bedford Forrest, was named Grand Wizard of the Klan at an 1867 convention.[25] Forrest was a delegate to the Democratic National Convention in 1868. In 1869, Forrest disbanded the central organization of the Klan, but the local branches continued to operate independently.

According to History.com, "Founded in 1866, the Ku Klux Klan (KKK) extended into almost every southern state by 1870 and became a vehicle for white southern resistance to the Republican Party's Reconstruction-era policies aimed at establishing political and economic equality for blacks. Its members waged an underground campaign of intimidation and violence directed at white and black Republican leaders. Though Congress passed legislation designed to curb Klan terrorism, the organization saw its primary goal–the reestablishment of white supremacy–fulfilled through Democratic victories in state legislatures across the South in the 1870s."[26]

The 1870s crackdown on the Klan effectively put an end to the Ku Klux Klan during the Reconstruction period, but the organization saw a nationwide resurgence in 1915, spurred in part by the release of the D.W. Griffith movie, *Birth of a Nation.*

According to History.com, "This second generation of the Klan was not only anti-black but also took a stand against Roman Catholics, Jews, foreigners and organized labor. It was fueled by growing hostility to the surge in immigration that America experienced in the early 20th century along with fears of communist revolution akin to the Bolshevik triumph in Russia in 1917. The organization took as its symbol a burning cross and held rallies, parades and marches around the country. At its peak in the 1920s, Klan membership exceeded four million people nationwide."[27] The organization attained significant political influence in a handful of

states, but lost membership during the Great Depression in the 1930s. The second iteration of the Klan disbanded in 1944.

After the modern civil rights movement began in the mid-1950s, the Klan saw its third resurgence. Klansmen murdered several civil rights workers between 1955 and 1965, and infamously bombed the Sixteenth Street Baptist Church in Birmingham, Alabama, in 1963, killing four black girls. Rather than intimidate civil rights activists, the murders of the civil rights workers and innocent girls served only to turn public opinion against the Jim Crow system. The Klan never regained the influence it had in the 1920s. It continues to exist, but with only a few thousand members scattered around the country.

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III. Jim Crow was Democratic:

The Politics of Jim Crow

Jim Crow was principally a Southern political institution, and the South was solidly Democratic throughout the entire Jim Crow era. Republicans, denounced as "carpetbaggers," moved to the South after the Civil War to rebuild the region's political institutions, in particular to promote black political participation. After the Reconstruction period, which ended in 1876, there were very few Republicans in the South until the Jim Crow era ended in 1965.

Jim Crow's political purpose was to keep the white population in power, and the Democratic Party thought of itself as the white man's party. A chronological look at the Jim Crow era will illustrate how Democrats created and exploited Jim Crow.

The Civil War period, 1860–1865

The Civil War was precipitated by the election in 1860 of the first Republican president, Abraham Lincoln. Opposition to slavery was the reason for the existence of the Republican Party, which was the political voice of the largely church-based abolition movement. After supporting Lincoln's election in 1860, leading black abolitionist Frederick Douglass remained a loyal Republican until his death in 1895.[28]

According to PBS, "The [GOP's] founders totally opposed slavery. The platform adopted at the party's first national convention in 1856 rejected the Southern position that Congress had the right to recognize slavery in a territory. The Party maintained that Congress could abolish slavery in the territories and ought to do so."[29]

The Democratic Party was divided over slavery in 1860, and the two factions nominated their own candidates. The division contributed to Lincoln's electoral victory.

In 1860, Lincoln ran on a platform that explicitly opposed slavery and demanded an end to the "recently reopened African slave trade."[30] On April 16, 1862, Lincoln freed the slaves in Washington, D.C.[31] On January 1, 1863, Lincoln issued the Emancipation Proclamation, which freed slaves in the states in rebellion against the Union.

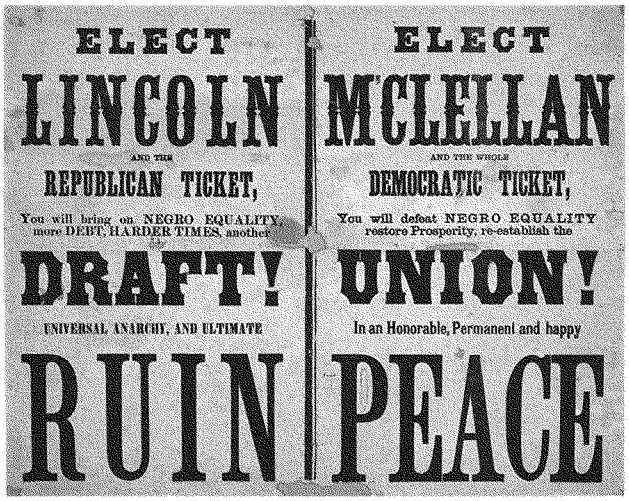
Northern Democrats widely opposed abolition. Historian Leslie M. Harris offers a snapshot of the attitude in New York City during the early war years: "Increasing support for the abolitionists and for emancipation led to anxiety among New York's white proslavery supporters of the Democratic Party, particularly the Irish. From the time of Lincoln's election in 1860, the Democratic Party had warned New York's Irish and German residents to prepare for the emancipation of slaves and the resultant labor competition when southern blacks would supposedly flee north."[32]

The Emancipation Proclamation was used by Northern Democrats to foment hatred against blacks. When New York City's infamous anti-draft riots erupted on July 13, 1863, mobs numbering in the thousands targeted, beat and sometimes killed blacks, and destroyed black neighborhoods and businesses. One group even plundered the Colored Orphan Asylum on Fifth Avenue in Manhattan, and burned it to the ground.

Democrats in the South were, of course, loyal to the Confederacy, and gave their lives during the war to preserve their right to run their states as they wished — including the right to own slaves. In the North, Democrats generally opposed the Civil War, and the party fought to end the combat. The Democratic nominee for President in 1864, failed Union Major General George McClellan, ran on a platform calling for "immediate efforts [to] be made for a cessation of hostilities."[33] With the Confederacy tottering and Northern victory just months away, the Democratic Party wanted to abandon the war effort, which would allow the nation to remain permanently divided, and abandon blacks to servitude.

Reconstruction, 1865–1876

Democratic strategy during the Reconstruction period had two principal objectives: to retake control of Southern governments from the Republican administrations established in 1865, and to defeat Republican efforts to elevate blacks to full citizenship.



Democratic campaign poster, 1864

Abraham Lincoln was shot by Southern white supremacist John Wilkes Booth on April, 11, 1865, just two days after Robert E. Lee surrendered at Appomattox, Virginia, and died the next day. Lincoln's Vice President, Democrat Andrew Johnson, subsequently entered the Oval Office. Lincoln had chosen Johnson, a man from the opposing political party, to be his running mate in 1864 in order to broaden his public appeal and improve his chances to be reelected.

Johnson preferred a lenient policy during Reconstruction, allowing white Southerners to run their states their own way. In particular, Johnson permitted the continuation of "black codes," laws used to oppress and control blacks before and during the Civil War. According to PBS, "After Lincoln's assassination, Johnson and the Republican Congress were at loggerheads over who would control Reconstruction. Johnson wanted to re-admit the Southern states back into the Union and allow them to define the status of blacks. Congress wanted the federal government to insure black rights."[34]

Republicans were having none of Johnson's leniency. After a major electoral victory in 1866, so-called "Radical Republicans" were able to force through a series of Constitutional amendments and laws guaranteeing blacks full civil rights, including the right to vote. Johnson vetoed these laws, but Congress overrode his vetoes. Eventually the House of Representatives impeached Johnson, but the Senate failed to remove him from office.

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Powered by black votes, Republicans established governments throughout the South. PBS notes:

> "The Republicans established a bi-racial coalition, with whites dominating. Blacks won hundreds of elected positions and were appointed to many administrative positions.
>
> But white Southerners began to rally under the banner of white supremacy. They won some states peacefully by a large majority of votes, but in Mississippi, Louisiana, and South Carolina Democrats used violence, fraud, intimidation and murder to win."[35]

Southern Democrats were determined to retake control of the South and put blacks back in their place, and they weren't fighting fair. History.com agrees: "Southern whites frustrated with policies giving former slaves the right to vote and hold office increasingly turned to intimidation and violence as a means of reaffirming white supremacy.[37] The Ku Klux Klan targeted local Republican leaders and blacks who challenged their white employers, and at least 35 black officials were murdered by the Klan and other white supremacist organizations during the Reconstruction era."[36]

Did the Democratic Party formally take over the KKK soon after the Klan was founded? The point is debatable, but there is no question the Ku Klux Klan was associated closely with the Democrats, and that during Reconstruction, the Klan's mission was heavily political. "Throughout the South, secret societies such as the Ku Klux Klan, the White League and the Red Shirts served as the military arm of the Democratic party and used violence to maintain white supremacy." According to historian David Barton, the Democratic-KKK connection is undeniable. "'Although it is relatively unreported today, historical documents are unequivocal that the Klan was established by Democrats and that the Klan played a prominent role in the Democratic Party,' Barton writes in his book. 'In fact, a 13-volume set of congressional investigations from 1872 conclusively and irrefutably documents that fact... The Klan terrorized black Americans through murders and public floggings; relief was granted only if individuals promised not to vote for Republican tickets, and violation of this oath was punishable by death,' he said. 'Since the Klan targeted Republicans in general, it did not limit its violence simply to black Republicans; white Republicans were also included.'"[38]

Underground terrorist organizations like the KKK, all widely associated with the Democratic Party, wreaked havoc across the South. History.com adds, "At least 10 percent of the black legislators elected during the 1867-1868 constitutional conventions became victims of violence during Reconstruction, including seven who were killed. White Republicans (derided as

"carpetbaggers" and "scalawags") and black institutions such as schools and churches—symbols of black autonomy—were also targets for Klan attacks."[39]

In one especially horrific 1873 incident, "a band of whites murdered over 100 blacks who were assembled to defend Republican officeholders against attack in Colfax, Louisiana."[40]

According to PBS,[41] "The Democratic Party identified itself as the "white man's party" and demonized the Republican Party as being "Negro dominated," even though whites were in control. Determined to re-capture the South, Southern Democrats "redeemed" state after state -- sometimes peacefully, other times by fraud and violence. By 1877, when Reconstruction was officially over, the Democratic Party controlled every Southern state."

PBS continues, "The South remained a one-party region until the Civil Rights movement began in the 1960s. Northern Democrats, most of whom had prejudicial attitudes towards blacks, offered no challenge to the discriminatory policies of the Southern Democrats."

On the legislative level, Congressional Republicans proposed, and Democrats opposed, a series of Reconstruction-era laws intended to elevate blacks, in particular to force Southern states to enforce the Constitutional amendments extending full civil rights and voting rights to blacks. These included the Civil Rights Act of 1866[42], the Reconstruction Act of 1867[43], the Enforcement Act of 1870[44], the Ku Klux Klan Act of 1871[45], and the Civil Rights Act of 1875.[45]

By the end of Reconstruction, Republicans had real influence in Southern elections only in states still occupied by Federal troops. According to the University of Michigan, "By 1873, Republicans were losing their enthusiasm for protecting black rights. Despite the presence of federal troops, sent by President Grant to protect black voting rights, white Democrats effectively resumed campaigns of violence and intimidation to suppress the Republican vote ... The formal end to Reconstruction was brought about in the disputed 1876 Presidential election. The Democratic candidate, Tilden, won the popular vote, but neither candidate initially had a majority of electoral votes due to disputes over returns in Florida, Louisiana and S. Carolina--the only states in which federal troops were still stationed in 1876."[47]

The disputed election was ended by a compromise, in which Democrats allowed Republican Rutherford B. Hayes to become president in return for the complete withdrawal of Federal occupying troops. Reconstruction ended with the South firmly in Democratic hands.

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Jim Crow, 1877–1954

Once their control of Southern governments was established, Democrats used many tools to solidify their power. A number of these tools have already been listed in Section I of this paper, but several of these techniques deserve a closer look. The following material is taken from the University of Michigan post, "Techniques of Direct Disenfranchisement, 1880-1965":

> The 15th Amendment prohibited explicit disenfranchisement on the basis of race or prior enslavement. So Southern states devised an array of alternative techniques designed to disenfranchise blacks and, to a lesser extent, poor whites. There were three broad, overlapping phases of the disenfranchisement process. From 1868-1888, the principal techniques of disenfranchisement were illegal, based on violence and massive fraud in the vote counting process. Starting in 1877, when Georgia passed the cumulative poll tax, states implemented statutory methods of disenfranchisement. From 1888-1908, states entrenched these legal techniques in their constitutions.
>
> **Fraud.** Electoral fraud by ballot box stuffing, throwing out non-Democratic votes, or counting them for the Democrats even when cast for the opposition, was the norm in the Southern states before legal means of disenfranchisement were entrenched. Between 1880 and 1901, Congress seated 26 Republican or Populist congressional candidates who had been "defeated" through electoral fraud.
>
> **Poll Taxes.** Georgia initiated the poll tax in 1871, and made it cumulative in 1877 (requiring citizens to pay all back taxes before being permitted to vote). Every former confederate state followed its lead by 1904. Although these taxes of $1-$2 per year may seem small, it was beyond the reach of many poor black and white sharecroppers, who rarely dealt in cash. The Georgia poll tax probably reduced overall turnout by 16-28%, and black turnout by half.
>
> **Literacy Tests.** The first implicit literacy test was South Carolina's notorious "eight-box" ballot, adopted in 1882. Voters had to put ballots for separate offices in separate boxes. A ballot for the governor's race put in the box for the senate seat would be thrown out. The order of the boxes was continuously shuffled, so that literate people could not assist illiterate voters by arranging their ballots in the proper order. The adoption of the secret ballot constituted another implicit literacy test, since it prohibited anyone from assisting an illiterate voter in casting his vote. In 1890, Southern states began to adopt explicit literacy tests to disenfranchise voters. This had a large differential racial impact, since 40-60% of blacks were illiterate, compared to 8-18% of whites.

Restrictive and Arbitrary Registration Practices. Southern states made registration difficult, by requiring frequent re-registration, long terms of residence in a district, registration at inconvenient times (e.g., planting season), provision of information unavailable to many blacks (e.g. street addresses, when black neighborhoods lacked street names and numbers), and so forth. When blacks managed to qualify for the vote even under these measures, registrars would use their discretion to deny them the vote anyway.

The White Primary. Disenfranchisement brought about one-party rule in the Southern states. This meant that the Democratic nominee for any office was assured of victory in the general election, shifting the real electoral contest to the party primary. This fact provided yet another opportunity to disenfranchise blacks. Texas passed a law forbidding blacks from participating in Democratic primary elections. The Supreme Court struck down this law as a plain violation of the 14th and 15th Amendments ... So Texas passed another law providing for each party's state executive committee to determine who could vote in its primaries. Accordingly, the Texas Democratic Party Executive Committee resolved to permit only white Democrats to participate in its primary. The idea was that, as a private association, the party executive committee was not subject to the 14th and 15th Amendments, which applied only to the states. The Supreme Court rejected this reasoning ... The State Democratic Convention promptly met and passed a resolution limiting party membership to whites. This was enough to satisfy the Supreme Court that only private parties, not the state, were involved in determining primary electors ... It therefore upheld the exclusion of blacks from the Texas Democratic primary in [1935]. ... [In 1944 the Supreme Court] found that primary elections were so pervasively regulated by the state that, in doing their part to run primaries, political parties were state actors and thus subject to the 14th and 15th Amendments. Texas Democrats evaded this ruling by arrangement with the all-white Jaybird Democratic Association (a leadership caucus within the party), which held elections unregulated by the state. The winner of the Jaybird Party election would enter the Democratic party primary, and the Democratic party would put up no opposition, thus ensuring victory to the Jaybird Party candidate. The Supreme Court saw through this ruse in 1953, finally putting an end to the white primary in its Terry v. Adams decision.[48]

These methods of disenfranchising blacks proved extremely effective in keeping the Democratic Party in power throughout the Jim Crow era. For example, in the 1948 Congressional election, "almost all counties in the Deep South delivered 98% or more votes to the Democrats."[49] And in Fort

Bend County, Texas, the jurisdiction giving rise to Terry v. Adams, Jaybird candidates won every election for more than 50 years.[50]

According to the Civil Rights Movement Veterans, "In December of 1964 when the Southern Christian Leadership Conference (SCLC) begins sending organizers into Selma, Montgomery, and adjacent counties, no more than 2% of Dallas County's 15,000 eligible Blacks have managed to register. In some of the nearby rural counties such as Lowndes and Wilcox, Blacks far outnumbered whites, but no Blacks at all are registered, while white registration is 110% or higher. More whites can be registered than actually live in the county because when whites die or move away their names are kept on the voter rolls, and every election day they somehow manage to vote for the candidates favored by the entrenched power structure."[51]

Democrats became politically competitive throughout the United States soon after the end of Reconstruction. After regaining control of the White House and Congress, the Democrats passed the 1894 Repeal Act, which turned the clock back on the Republican civil rights legislation passed during Reconstruction.

In another backward step, Democratic President Woodrow Wilson segregated the federal government in 1913, costing many blacks their federal jobs. Wilson made the KKK recruiting film, *Birth of a Nation*, the first movie ever shown in the White House. According to one historian, the Ku Klux Klan was a "wing of the Democrat Party"[52] during the first third of the 20th Century.

The absolute dominance of the Democratic Party in the South enabled Democrats to block Congressional efforts to attack the Jim Crow system. According to PBS, "One of the consequences of the Democratic victories in the South was that many Southern Congressmen and Senators were almost automatically re-elected every election. Due to the importance of seniority in the U.S. Congress, Southerners were able to control most of the committees in both houses of Congress and kill any civil rights legislation. Even though Franklin Delano Roosevelt was a Democrat, and a relatively liberal president during the 1930s and '40s, he rarely challenged the powerfully entrenched Southern bloc. When the House passed a federal anti-lynching bill several times in the 1930s, Southern senators filibustered it to death."[53]

Roosevelt's liberalism did not necessarily extend to his attitude toward race. FDR was responsible for appointing two segregationists to the Supreme Court, Jimmy Byrnes and former Klansman Hugo Black.[54] Black was nominated in in 1937 because he was politically liberal, and considered certain to support Roosevelt's New Deal legislation.

Violence remained a powerful weapon for maintaining Democratic power throughout Jim Crow, but the number of lynchings declined continually after

the first two decades of the 20th Century. Gibson attributes that reduction to a bill passed by the Republican-controlled House of Representatives in 1922. "The Dyer Anti-Lynching Bill provided fines and imprisonment for persons convicted of lynching in federal courts, and fines and penalties against states, counties, and towns which failed to use reasonable efforts to protect citizens from mob violence. It was killed in the Senate by the filibuster of the Southern senators who claimed that anti-lynching legislation would be unconstitutional and an infringement upon states' rights. However, the long discussion of the Dyer Anti-Lynching Bill was of great importance to the decline.[55]

The Democrats completely dominated national politics throughout the 1930s and 1940s, with full control of the White House and both houses of Congress until 1947. Northern Democrats were gradually turning against Jim Crow, but they were unwilling to challenge Southern Democrats about the ongoing oppression of blacks. No significant steps were taken by Democrats to advance civil rights until 1947, when President Harry S. Truman began to speak publicly about the need to end discrimination in the United States. The former outspoken racist, and, briefly, Klansman, ordered the desegregation of the military in 1948, in part to win black votes for his reelection bid, but also possibly because he had a change of heart about the oppression of blacks.

Civil Rights Era, 1954–1965

The first in a series of mortal blows to Jim Crow was a Supreme Court decision banning segregation in the schools. In 1954, the Supreme Court, led by Republican President Dwight Eisenhower's appointee, Chief Justice Earl Warren, handed down its *Brown vs. Board of Education* decision rejecting "separate but equal" schools. Southern Democrats chose to resist school desegregation.

Even before the *Brown* decision was announced, Georgia Democratic Governor Herman Talmadge declared, "We intend to maintain separate schools in Georgia in one way or another, come what may." Talmadge included the possibility of taxpayer-funded tuition payments to private schools, "if that becomes necessary."[56]

The Brown decision was condemned in 1956 by the "Southern Manifesto," a document signed by 99 Members of Congress. The Manifesto read, in part:[57]

> We commend the motives of those States which have declared the intention to resist forced integration by any lawful means...
>
> We pledge ourselves to use all lawful means to bring about a reversal of this decision which is contrary to the Constitution and to prevent the use of force in its implementation.

Ninety-seven of the Manifesto's signers were Democrats, and two were Republicans. The Republican platform in the 1956 elections endorsed the Brown decision. The Democratic platform did not endorse the decision.[58]

In 1956, the Republicans, led by President Eisenhower and Senate Minority Leader Everett Dirksen of Illinois, introduced a comprehensive civil rights bill, the first considered by Congress since 1875. The 1956 bill "intended to outlaw the various measures that states had implemented in order to prevent African Americans from voting, such as poll taxes and reading tests."[59] Republicans in the House supported the bill overwhelmingly, 168-24, and Democrats in the House supported it narrowly, 111-102. In the Senate, the legislation was blocked by the Democratic Senate Majority Leader, Lyndon Baines Johnson (LBJ) of Texas, who, up to this point in his career, was a consistent opponent of civil rights. LBJ's reading of the course of history, and his ambition to become President, may have influenced his later reversal on civil rights.

In 1957, the Republicans took another bite at the apple, and this time they succeeded. They pushed through the 1957 Civil Rights Act, the first civil rights legislation to be enacted since Reconstruction. But the bill itself had no teeth. LBJ couldn't stop the 1957 legislation, but he did manage to strip all of the enforcement provisions out before the bill passed.

Nevertheless, Southern Democratic resistance to the bill was bitter. One opponent, Democratic Senator Strom Thurmond of South Carolina, set the record for the longest spoken filibuster in American history by holding the Senate floor for 24 hours and 18 minutes.[60] Opposition to the bill was not limited to Southern Democrats; Massachusetts Democratic Senator John F. Kennedy also voted against the 1957 Civil Rights Act. Other prominent Democratic senators opposing the 1957 Civil Rights Act included J. William Fulbright of Arkansas, Russell Long of Louisiana, John Stennis of Mississippi, Sam Ervin of North Carolina, Wayne Morse of Oregon, Albert Gore Sr. of Tennessee, and Harry Byrd of Virginia. In the end, Republicans in the Senate supported the 1957 Civil Rights Act 43-0, and Democrats supported the bill 29-18.[61]

Wall Street Journal columnist James Taranto cites author Bruce Bartlett on Johnson's motivation for allowing the 1957 bill to pass:[62]

> To put it mildly, LBJ was not a consistent advocate of racial equality. Bartlett (both in his book and in this article) quotes LBJ's explanation why he backed the Civil Rights Act of 1957:
>
> "These Negroes, they're getting pretty uppity these days and that's a problem for us since they've got something now they never had before, the political pull to back up their uppityness. Now we've got to do something about this, we've got to give them a little something,



As Senate Majority Leader, Texas Democrat Lyndon Baines Johnson blocked Eisenhower's 1956 civil rights bill, and gutted the 1957 Civil Rights Act.

just enough to quiet them down, not enough to make a difference. For if we don't move at all, then their allies will line up against us and there'll be no way of stopping them, we'll lose the filibuster and there'll be no way of putting a brake on all sorts of wild legislation. It'll be Reconstruction all over again."

According to Bartlett, "Eisenhower was disappointed at not being able to produce a better piece of legislation. 'I wanted a much stronger civil rights bill in '57 than I could get,' he later lamented. 'But the Democrats... wouldn't let me have it.'"

In September 1957, the NAACP attempted to put the 1954 *Brown* decision into effect by integrating Central High School in Little Rock, Arkansas. In defiance of the Supreme Court-ordered integration, Democratic Governor Orval Faubus ordered the Arkansas National Guard to prevent the first group of black students, the Little Rock Nine, from entering the school. At the urging of Dr. Martin Luther King, Jr., Republican President Dwight Eisenhower resolved the issue by sending in the 101st Airborne Division of the U.S. Army (the "Band of Brothers" division) to escort and protect the black students for the duration of the school year.

Governor Faubus wasn't finished with his fight against desegregation. "Before schools opened in the fall of 1958, Faubus closed all four of Little Rock's public high schools rather than proceed with desegregation, but his efforts were short lived. In December 1959, the Supreme Court ruled that the school board must reopen the schools and resume the process of desegregating the city's schools."[63]

In 1960, President Eisenhower pushed through his second major civil rights bill. "The 1960 Civil Rights Act introduced penalties to be levied against anybody who obstructed someone's attempt to register to vote or someone's attempt to actually vote. A Civil Rights Commission was created."[64] Again, no Republican senators opposed the bill, while 18 Democrats filibustered it. Significantly, John F. Kennedy, in the midst of his Presidential campaign, switched sides and voted for the bill.[65]

Debate about banning the poll tax had gone on for decades, but Congressional efforts to end poll taxes were consistently blocked by Democratic filibusters. President Kennedy proposed banning the poll tax by amending the Constitution, rather than by federal legislation, in order to avoid a filibuster. On August 27, 1962, the House of Representatives passed the 24th Amendment to the U. S. Constitution, which banned the poll tax, by a vote of 295-86. Democrats supported the measure 163-71, and Republicans supported it 132-15.[66] The Senate passed the measure 77-16, but a partisan breakdown of the vote is not available.[67] The amendment be sent to the states for ratification, and it was ratified on January 23, 1964.

In 1963, Alabama Democratic Governor George Wallace made his infamous "Stand in the Schoolhouse Door," when he physically blocked two black students attempting to register at the University of Alabama. Wallace had just been elected governor, running with the campaign slogan "Segregation now! Segregation tomorrow! Segregation forever!"[68]

Also in 1963, Bull Connor, a member of the Democratic National Committee, turned fire hoses and dogs on peaceful civil rights protestors marching in Birmingham, Alabama.[69]

After becoming President, Democrat President John F. Kennedy proposed a new civil rights bill in 1963. Sadly, Kennedy was assassinated before he could push the legislation through Congress. The new President, Lyndon Baines Johnson, made it his business to pass the bill in Kennedy's memory.

Southern Democrats continued to wield the filibuster against the 1964 bill. In fact, they set the Senate record by maintaining the filibuster for 57 working days. A former Ku Klux Klan "Grand Cyclops," or head of his local Klan unit, Senator Robert Byrd of West Virginia, was the leader of the filibuster. Byrd personally held the floor for more than 14 consecutive hours. Despite his Klan involvement, which lasted for several years during the 1940s, Byrd was eventually elected Senate Majority Leader by his fellow Democrats, who gave him the nickname, "The conscience of the Senate." Byrd continued to serve in the Senate until 2010.

In the end, more than 80 percent of Republican legislators voted for the 1964 Civil Rights Act, which outlawed segregation. The Act was the single piece of legislation most responsible for breaking the back of Jim Crow. Fewer than 70 percent of Democrats supported the bill.

Ever the political calculator, infamously having won his Senate seat in 1948 through overt vote fraud in the Democratic primary, Johnson was

very concerned about the political ramifications of the Act. "Upon signing the Civil Rights Act of 1964, Lyndon Johnson is said to have told aide Bill Moyers, 'I think we have just delivered the South to the Republican Party for a long time to come.'"[70]

The Jim Crow era concluded with the passage of the Voting Rights Act in 1965. According to SCLC veteran Bruce Hartford, Martin Luther King, Jr. had to twist LBJ's arm to get him to push the bill:

> "My understanding is that after the Civil Rights Act of 1964 was passed, President Johnson told King that there had been enough civil rights legislation. No more civil rights legislation could be passed for a couple of years, things had to be quieted down, particularly because it would affect the campaign against Goldwater. Remember the phrase "Cooling off period?" So Johnson told King that he was not going to do any more civil rights acts for the foreseeable future. And the reason King decided to do the Selma campaign was to *force* Johnson — to create such a public pressure and turmoil — that Johnson would be forced to act. It was not that Johnson asked him to do it — it was in opposition to Johnson."[71]

Johnson is also on record defending his newfound support for civil rights and his launching of a national welfare entitlement program through his Great Society legislation, by referring to the purely political advantage he expected Democrats to receive. As Johnson infamously said to two Democratic governors on Air Force One, "I'll have those niggers voting for the Democratic Party for the next 200 years."[72]

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Conclusion

The Jim Crow period was one of the most horrible chapters in American history, exceeded only by slavery and the conquest and dispossession of the American Indian. For nearly an entire century, more than a third of our national existence, Jim Crow forced a group of innocent human beings to live in fear and degradation. They were systematically segregated from society, dehumanized, and terrorized. On a massive scale, members of this group were cheated of their right to vote, to live where they wished, and to associate with whom they wished. People were beaten and murdered at the whim of a more powerful group acting out of its own fear, its malice, and its lust for power.

It's bewildering to realize that while Jim Crow reigned, America was fighting for freedom around the globe, destroying fascism and leading the fight against perhaps the greatest tyranny mankind has ever known, communism. Yet as we led humanity toward liberty, respect for human dignity, and embrace of the rule of law, we denied millions of America's own citizens the most basic human rights. In effect, the Constitution did not apply to them.

During Jim Crow, millions of Americans organized themselves politically with the overriding objective of dominating and dehumanizing another group of people. Jim Crow teaches us that a great American political party is capable of subordinating the good of the nation and of humanity to its own selfish interest.

If Americans take any lesson from Jim Crow, it is to be humble. Our country was founded to be a shining city on a hill, but during Jim Crow we proved ourselves to be as capable of committing great evil as any nation on earth.

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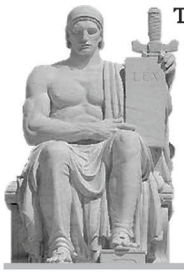
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The American Civil Rights Union

The American Civil Rights Union (ACRU) is dedicated to protecting the civil rights of all Americans by publicly advancing a Constitutional understanding of our essential rights and freedoms. The ACRU monitors and counters organizations that threaten our Constitutional rights. It files amicus briefs in critical civil rights cases, and defends the Constitution in print and broadcast media and on the Internet. The ACRU is committed to ensuring that those who believe in traditional moral values remain free to hold, express, teach, and practice those beliefs.

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Constitution of Virginia, 1902

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Whereas, pursuant to an act of the General Assembly of Virginia, approved March the fifth, in the year of our Lord, nineteen hundred, the question, "shall there be a convention to revise the Constitution and amend the same?" was, submitted, to the electors of the State of Virginia, qualified to vote for members of the General Assembly, at an election held throughout the State on the fourth Thursday in May, in the year nineteen hundred, at which election a majority of the electors so qualified voting at said, election did, decide in favor of a convention for such purpose; and,
Whereas, the General Assembly at its next session did provide by law for the election of delegates to such convention, in pursuance whereof the members of this Convention were elected by the good people of Virginia, to meet in convention for such purpose.
We, therefore, the people of Virginia, so assembled in Convention through our representatives, with gratitude to God for His past favors, and invoking His blessings upon, the result of our deliberations, do ordain and establish the, following revised and amended Constitution for the government of the Commonwealth:

ARTICLE I
BILL OF RIGHTS.

A DECLARATION OF RIGHTS, made by the representatives of the good people of Virginia assembled in full and free Convention; which rights do pertain to them and their posterity, as the Basis and Foundation of Government.
Section 1. That all men are by nature equally free and independent, and have certain inherent rights of which, when they enter into a state of society, they cannot., by any compact, deprive or divest their posterity, namely, the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety.
Section 2. That all power is vested in, and, consequently derived. from, the people; that magistrates are their trustees and servants, and at all times amenable to them.
Section 3. That government is, or ought to be, instituted for the common benefit, protection and security of the people, nation or community; of all the various modes and forms of government, that is best,

which is capable of producing the greatest degree of happiness and safety, and is most effectually secured against the danger of maladministration; and, whenever any government shall be found inadequate or contrary to these purposes, a majority of the community hath an indubitable, inalienable, and indefeasible right to reform, alter or abolish it, in such manner as shall be judged most conducive to the public wealth.

Section 4. That no man, or set of men, is entitled, to exclusive or separate emoluments or privileges from the community, but in consideration of public services; which not being descendible, neither ought the offices of magistrate, legislator or judge to be hereditary.

Section 5. That the legislative, executive, and judicial departments of the State should be separate and distinct; and that the members thereof may be restrained. from oppression, by feeling and, participating the burthens of the people, they should, at fixed periods, be reduced to a private station, return into that body from which they were originally taken, and the vacancies be supplied by regular elections, in which all or any part of the former members shall be again eligible, or ineligible, as the laws may direct.

Section 6. That all elections ought to be free; and that all men, having sufficient evidence of permanent common interest with, and attachment to, the community, have the right of suffrage, and cannot be taxed, or deprived of, or damaged in, their property for public uses, without their own consent, or that of their representatives duly elected, or bound by any law to which they have not, in like manner, assented for the public good.

Section 7. That all power of suspending laws, or the execution of laws, by any authority, without consent of the representatives of the people, is injurious to their rights, and ought not to be exercised.

Section 8. That no man shall be deprived of his life, or liberty, except by the law of the land, or the judgment of his peers; nor shall any man be compelled in any criminal proceeding to give evidence against himself, nor be put twice in jeopardy for the same offence, but an appeal may be allowed to the Commonwealth in all prosecutions for the violation of a law relating to the state revenue. That in all criminal prosecutions a man hath a right to demand the cause and nature of his accusation, to be confronted with the accusers and witnesses, to call for evidence in his favor, and to a speedy trial by an impartial jury of his vicinage, without whose unanimous consent he cannot be found guilty; provided, however, that in any criminal case upon a plea of guilty, tendered in person by the accused, and with the consent of the attorney for the Commonwealth, entered of record, the court shall, and in a prosecution for an offence not punishable by death, or confinement in the penitentiary, upon a plea of not guilty, with the consent of the accused, given in person, and of the attorney for the Commonwealth, both entered of record, the court in its discretion, may hear and determine the case, without intervention of a jury; and that the General Assembly may provide for trial of offences not punishable by death, or confinement in the penitentiary, by a justice of the piece, without a jury, preserving in all such cases, the right of the accused to an appeal to and trial by jury in the circuit or corporation court; and may also provide for juries consisting of less than twelve, but not less than five, for trial of offences not punishable by death, or confinement in the penitentiary, and may classify such cases, and prescribe the number of jurors for each class.

Section 9. That excessive bail ought not to be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Section 10. That general warrants, whereby an officer or messenger may be commanded to search suspected places without evidence of a fact committed, or to seize any person or persons not named, or whose offence is not particularly described and by evidence are grievous and oppressive, and ought not to be granted.

Section 11. That no person shall be deprived of his property without due process of law; and in

controversies respecting property, and in suits between man and man, trial by jury is preferable to any other, and ought to be held sacred; but the General Assembly may limit the number of jurors for civil cases in circuit and corporation courts to not less than five in cases now cognizable by justices of the peace, or to not less than seven in cases not so cognizable.

Section 12. That the freedom of the press is one of the great bulwarks of liberty, and can never by restrained but by despotic governments; and any citizen may freely speak, write and publish his sentiments on all subject being responsible for the abuse of that right.

Section 13. That a well-regulated. militia, composed of the body of the people, trained to arms, is the proper, natural and safe defence of a free state; that standing armies, in time of peace, should be avoided as dangerous to liberty; and that in all cases the military should be under strict subordination to, and governed by, the civil power.

Section 14. That the people have a right to uniform government; and, therefore, that no government separate from, or independent of, the government of Virginia, ought to be erected or established within the limits thereof.

Section 15. That no free government, or the blessing of liberty, can be preserved to any people, but by a firm adherence to justice; moderation, temperance, frugality and virtue, and by frequent recurrence to fundamental principles.

Section 16. That religion, or the duty which we owe to our Creator, and the manner of discharging it, can be directed only by reason and conviction, not by force or violence; and, therefore, all men are equally entitled to the free exercise of religion, according to the dictates of conscience; and that it is the mutual duty of all to practice Christian forbearance, love and charity towards each other.

Section 17. The rights enumerated, in this Bill of Rights shall not be construed to limit other rights of the people not therein expressed.

ARTICLE II

ELECTIVE FRANCHISE AND QUALIFICATIONS FOR OFFICE

Section 18. Every male citizen of the United States, twenty-one years of age, who has been a resident of the State two years, of the county, city, or town one year, and of the precinct in which he offers to vote, thirty days, next preceding the election in which he offers to vote, has been registered, and has paid his state poll taxes, as hereinafter required, shall be entitled to vote for members of the General Assembly and all officers elective by the people; but removal from, one precinct to another, in the same county, city or town shall not deprive any, person of his right to vote in the precinct from which he has moved, until the expiration of thirty days after such removal.

Section 19. There shall be general registrations in, the counties cities and towns of the State during the years nineteen, hundred and two and nineteen hundred and three at such times and in such manner as, may be prescribed by an ordinance of this Convention. At such registrations every male citizen of the United States having the qualifications of age and residence required in section Eighteen shall be entitled to register, if he be:

- First. A person who, prior to the adoption of this Constitution, served in time of war in the army or navy of the United States, of the Confederate States, or of any state of the United States or of the Confederate States; or,
- Second. A son of any such person; or,
- Third. A person, who owns property, upon which, for the year next preceding that in which he offers to register, state taxes aggregating at least one dollar have been paid.; or,
- Fourth. A person able to read any section of this Constitution submitted to him by the officers of registration and to give a reasonable explanation of the same; or, if unable to read, such section,

able to understand and give a reasonable explanation thereof when read to him by the officers. A roll containing the names of all persons thus registered, sworn to and certified by the officers of registration, shall be filed, for record and preservation, in the clerk's office of the circuit court of the county, or the clerk's office of the corporation court of the city as the case may be. Persons thus enrolled, shall not be required to register again, unless they shall have ceased to be residents of the State, or become disqualified by section Twenty-three. Any person denied registration under this section shall have the right of appeal to the circuit court of his county, or the corporation court of his city, or to the judge thereof in vacation.

Section 20. After the first day of January, nineteen hundred and four, every male citizen of the United States, having the qualifications of age and residence required in section Eighteen, shall be entitled to register, provided:

- First. That he has personally paid to the proper officer all state poll taxes assessed or assessable against him, under this or the former Constitution, for the three years next preceding that in which he offers to register; or, if he come of age at such time that no poll tax shall have been assessable against him for the year preceding the year in which he offers to register, has paid one dollar and fifty cents, in satisfaction of the first year's poll tax assessable against him; and,
- Second. That, unless physically unable, he make application to register in his own hand-writing, without aid, suggestion, or memorandum, in the presence of the registration officers, stating therein his name, age, date and place of birth, residence and occupation at the time and for the two years next preceding, and whether he has previously voted, and, if so, the state, county, and precinct in which he voted last; and,
- Third. That he answer on, oath any and all questions affecting his qualifications as an elector, submitted, to him by the officers, of registration, which questions, and his answers thereto, shall be reduced to writing, certified by the said officers, and preserved as a part of their official records.

Section 21. Any person registered under either of the last two sections, shall have the right to vote for members of the General Assembly and all officers elective by the people, subject to the following conditions: That he, unless exempted by section Twenty-two, shall, as a prerequisite to the right to vote after 'he first day of January, nineteen hundred and four, personally pay, at least six months prior to the election, all state poll taxes assessed or assessable against him, under this Constitution, during the three years next preceding that in which he offers to vote; provided that, if he register after the first day of January, nineteen hundred and four, he shall, unless physically unable, prepare and deposit his ballot without aid, on such printed form as the law may prescribe; but any voter registered prior to that date may be aided in the preparation of his ballot by such officer of election as he himself may designate.

Section 22. No person who, during the late war between the States, served in the army or navy of the United, States, or the Confederate States, or any state of the United States, or of the Confederate States, shall at any time be required to pay a poll tax as a prerequisite to the right to register or vote. The collection of the state poll tax assessed against any one shall not be enforced by legal process until the same has become three years past due.

Section 23. The following persons shall be excluded, from registering and voting: Idiots, insane persons, and paupers; persons who, prior to the adoption of this Constitution, were disqualified from voting, by conviction of crime, either within or without this State, and whose disabilities shall not have been removed; persons convicted after the adoption of this Constitution, either within or without this State, of treason, or of any felony, bribery, petit larceny, obtaining money or property under false pretences, embezzlement, forgery, or perjury; persons who, while citizens of this State, after the adoption of this Constitution, have fought a duel with a deadly weapon, or sent or accepted a challenge

to fight such duel, either within or without this State, or knowingly conveyed a challenge, or aided or assisted in any way in the fighting of such duel.

Section 24. No officer, soldier, seaman, or marine of the United States army or navy shall be deemed to have gained a residence as to the right of suffrage, in the State, or in any county, city or town thereof, by reason of being stationed therein; nor shall an inmate of any charitable institution or a student in any institution of learning, be regarded as having either gained or lost a residence, as to the right of suffrage, by reason of his location or sojourn in such institution.

Section 25. The General Assembly shall provide for the annual registration of voters under section Twenty, for an appeal by any person denied registration, for the correction of illegal or fraudulent registration, thereunder, and also for the proper transfer of all voters registered under this Constitution.

Section 26. Any person who, in respect to age or residence, would be qualified to vote at the next election, shall be admitted to registration, notwithstanding that at the time thereof he is not so qualified, and shall be entitled to vote at said election if then qualified under the provisions of this Constitution.

Section 27. All elections by the people shall be by ballot; all elections by any representative body shall be viva voce, and the vote recorded in the journal thereof. The ballot-box shall be kept in public view during all elections, and shall not be opened, nor the ballots canvassed or counted, in secret. So far as consistent with the provisions of this Constitution, the absolute secrecy of the ballot shall be maintained.

Section 28. The General Assembly shall provide for ballots without any distinguishing mark or symbol, for use in all state, county, city, and other elections by the people, and the form thereof shall be the same in all places where any such election is held. All ballots shall contain the names of the candidates, and of the offices to be filled, in clear print and in due and orderly succession; but any voter may erase any name and insert another.

Section 29. No voter, during the time of holding any election at which he is entitled to vote, shall be compelled to perform military service, except in time of war or public danger; to attend any court as suitor, juror, or witness; and no voter shall be subject to arrest under any civil process during his attendance at election or in going to or returning therefrom.

Section 30. The General Assembly may prescribe a property qualification not exceeding two hundred and fifty dollars for voters in any county or subdivision thereof, or city or town, as a prerequisite for voting in any election for officers, other than the members of the General Assembly, to be wholly elected by the voters of such county or subdivision thereof, or city, or town; such action, if taken, to be had upon the initiative of a representative in the General Assembly of the county, city or town affected: provided, that the General Assembly in its discretion may make such exemptions from the operation of said property qualification as shall not be in conflict with the Constitution of the United States.

Section 31. There shall be in each county and city an electoral board, composed of three members, appointed by the circuit court of the county ,or the corporation court of the city, or the judge of the court in vacation. Of those first appointed, one shall be appointed for a term of one year, one for a term of two years, and one for a term of three years; and, thereafter their successors shall be appointed for the full term of three years. Any vacancy occurring in any board, shall be filled by the same authority for the unexpired term. Each electoral board shall appoint the judges, clerks, and registrars of election for its county or city; and, in appointing judges of election, representation as far as possible shall be given to each of the two political parties which, at the general election next preceding their appointment, cast the highest and- next highest number of votes. No person, nor the deputy of any person, holding any office or post of profit or emolument, under the United States Government, or who is in the employment of such government, or holding any elective office of profit or trust in, the State, or in any county, city, or town thereof, shall be appointed a member of the electoral board, or registrar,

or judge of election.

Section 32. Every person qualified to vote, shall be eligible to any office of the State, or of any county, city, town, or other subdivision of the State, wherein he resides, except as otherwise provided in this Constitution, and except that this provision as to residence shall not apply to any office elective by the people where the law provides otherwise. Men and women eighteen years of age shall be eligible to the office of notary public, and qualified to execute the bonds required of them in that capacity.

Section 33. The terms of all officers elected under this, Constitution shall begin on the first day of February next succeeding their election, unless otherwise provided in this Constitution. All officers, elected or appointed, shall continue to discharge the duties of their offices after their terms of service have expired until their successors have qualified.

Section 34. Members of the General Assembly and all officers, executive and judicial, elected or appointed after this Constitution goes into effect, shall, before they enter on the performance of their public duties, severally take and subscribe the following oath or affirmation: "I do solemnly swear (or affirm) that I will support the Constitution of the United States, and the Constitution of the State of Virginia ordained by the Convention which assembled in the city of Richmond on the twelfth day of June, nineteen hundred and one, and that I will faithfully and impartially discharge and perform all the duties, incumbent on me as _____according to the best of my ability; so help me God."

Section 35. No person shall vote at any legalized primary election for the nomination of any candidate for office unless he is at the time registered and qualified to vote at the next succeeding election.

Section 36. The General Assembly shall enact such laws as are necessary and proper for the purpose of securing the regularity and purity of general, local and primary elections, and preventing and punishing any corrupt practices in connection therewith; and shall have power, in addition to other penalties and punishments now or hereafter prescribed by law for such offences, to provide that persons convicted of them shall thereafter be disqualified from voting or holding office.

Section 37. The General Assembly may provide for the use, throughout the State or in any one or more counties, cities, or towns in any election, of machines for receiving, recording, and counting the votes cast thereat: provided, that the secrecy of the voting be not thereby impaired.

Section 38. After the first day of January, nineteen hundred and four, the treasurer of each county and city shall, at least five months before each regular election, file with the clerk of the circuit court of his county, or of the corporation court of his city, a list of all persons in his county or city, who have paid not later than six months, prior to such election, the state poll taxes required by this Constitution during the three years next preceding that in which such election is held; which list shall be arranged alphabetically, by magisterial districts or wards, shall state the white and colored persons separately, and shall be verified by the oath of the treasurer. The clerk, within ten days from the receipt of the list, shall make and certify a sufficient number of copies thereof, and shall deliver one copy for each voting place in, his county or city, to the, sheriff of the county or sergeant of the city, whose duty it shall be to post one copy, without delay, at each of the voting-places, and, within ten days from the receipt thereof, to make return on oath to the clerk, as to the places where and dates at which said copies were respectively posted; which return the clerk shall record in a book kept in his office for the purpose; and he shall keep in his office for public inspection, for at least sixty days after receiving the list, not less than ten, certified copies thereof, and also cause the list to be published in such other manner as may be prescribed by law; the original list returned by the treasurer shall be filed and preserved by the clerk among the public records of his office for at least five years after receiving the same. Within thirty days after the list has been so posted, any person who shall have paid his capitation tax, but whose name is omitted from the certified list, may, after five days' written notice to the treasurer, apply to the circuit court of his county, or corporation court of his city, or to the, judge thereof in vacation, to have the

same corrected and, his name entered thereon, which application the court or judge shall promptly hear and decide. The clerk shall deliver, or cause to be delivered, with the poll-books, at a reasonable time before every election, to one of the judges of election of each precinct of his county or city, a like certified copy of the list, which shall be conclusive evidence of the facts therein stated for the purpose of voting. The clerk shall also, within sixty days after the filing of the list by the treasurer, forward a certified, copy thereof, with such corrections, as may have been made by order of the court or judge, to the Auditor of Public Accounts, who shall charge the amount of the poll taxes stated therein to such treasurer unless previously accounted for. Further evidence of the prepayment of the capitation taxes required by this Constitution, as a prerequisite to the right to register and vote, may be prescribed by law.

ARTICLE III
DIVISION OF POWERS

Section 39. Except as hereinafter provided, the legislative, executive, and judiciary departments shall be separate and distinct, so that neither exercise the powers properly belonging to either of the others, nor any person exercise the power of more than one of them at the same time.

ARTICLE IV
LEGISLATIVE DEPARTMENT

Section 40. The legislative power of the State shall be vested, in a General Assembly, which shall consist of a Senate and House of Delegates.

Section 41. The Senate shall consist of not more than forty and not less than thirty-three members, who shall be elected quadrennially by the voters of the several senatorial districts, on, the Tuesday succeeding the first Monday in November.

Section 42. The House of Delegates shall consist of not more than one hundred and not less than ninety members, who shall be elected biennially by the voters, of the several house districts) on the Tuesday succeeding the first Monday in November.

Section 43. The apportionment of the State into senatorial and house districts, made by the acts, of the General Assembly, approved April the second, nineteen hundred and, two, is hereby adopted; but a re-apportionment may be made in the year nineteen hundred and six, and shall be made in the year nineteen hundred, and twelve, and every tenth year thereafter.

Section 44. Any person may be elected senator who, at the time of election, is actually a resident of the senatorial district and qualified to vote for members of the General Assembly; and, any person may be elected a member of the House of Delegates who, at the time of election, is actually a resident of the house district and qualified to vote for members of the General Assembly. But no person holding a salaried, office under the state government, and no judge of any court, attorney for the Commonwealth, sheriff, sergeant, treasurer, assessor of taxes, commissioner of the revenue, collector of taxes, or clerk of any court, shall be a member of either house of the General Assembly during his continuance in office, and the election of any such person to either house of the General Assembly, and his qualification as a member thereof, shall vacate any such office held by him; and no person holding any office or post of profit or emolument under the United States Government or who is in the employment of such government, shall be eligible to either house. The removal of a senator or delegate from the district for which he is elected, shall vacate his office.

Section 45. The members of the General Assembly shall receive for their services a salary to be fixed by law and paid from the public treasury; but no act increasing such salary shall take effect until after the end of the term for which the members, voting thereon were elected; and no member during the

term for which he shall have been elected, shall be appointed or elected to any civil office of profit in the State except offices filled by election by the people.

Section 46. The General Assembly shall meet once in two years on the second Wednesday in January next succeeding the election of the members of the House of Delegates and, not oftener unless convened in the manner prescribed by this Constitution. No session of the General Assembly, after the first under this Constitution, shall continue longer than sixty days; but with the concurrence of three-fifths of the members elected to each house, the session may be extended for a period not exceeding thirty days. Except for the first session held under this Constitution, members shall be allowed a salary for not exceeding sixty days at any regular session, and for not exceeding thirty days at any extra session. Neither house shall, without the consent of the other, adjourn to another place nor for more than three days. A majority of the members elected to each house shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and shall have power to compel the attendance of members in such manner and under such penalty as each house may prescribe.

Section 47. The House of Delegates shall choose its own speaker; and, in the absence of the Lieutenant-Governor, or when he shall exercise the office of Governor, the Senate shall choose from, their own body a president pro tempore. Each house shall select its officers, settle its rules of procedure, and direct writs of election for supplying vacancies which may occur during the session of the General Assembly; but, if vacancies occur during the recess, such writs may be issued by the Governor, under such regulations as may be proscribed by law. Each house shall judge of the election, qualification, and returns of its members; may punish them for disorderly behavior, and, with the concurrence of two-thirds, expel a member.

Section 48. Members of the General Assembly shall, in all cases, except treason, felony, or breach of the peace, be privileged from arrest during the sessions of their respective houses; and for any speech or debate in either house shall not be questioned, in any other place. They shall not be subject to arrest, under any civil process, during the sessions of the General Assembly, or the fifteen days next before the beginning or after the ending of any session.

Section 49. Each house shall keep a journal of its proceedings, which shall be published from time to time, and, the yeas and, nays, of the members of either house on any question shall, at the desire of one-fifth of those present, be entered on the journal.

Section 50. No law shall be enacted except by bill. A bill may originate in either house, to be approved or rejected by the other, or may be amended by either, with the concurrence of the other. No bill shall become a law unless, prior to its passage, it has been,

a) Referred to a committee of each house, considered by such committee in session, and reported;
b) Printed by the house, in which it originated, prior to its passage therein;
c) Read at length on three different calendar days in each house; and unless,
d) A yea and, nay vote has been taken, in each house upon its final passage, the names of the members voting for and against entered on the journal, and a majority of those voting, which shall include at least two-fifths of the members elected to each house, recorded in the affirmative.

And only in the manner required in subdivision (d) of this section shall an amendment to a bill by one house be concurred in by the other, or a conference report be adopted by either house, or either house discharge a committee from the consideration of a bill and consider the same as if reported; provided that the printing and, reading, or either, required in subdivisions (b) and (c) of this section, may be dispensed, with in a bill to codify the laws of the State, and in any case of emergency by a vote of four-fifths of the members voting in each house taken by the yeas and nays, the names of the members voting for and against, entered on the journal; and provided further, that no bill which creates, or

establishes a new office, or which creates, continues, or revives a debt or charge, or makes, continues or revives any appropriation of public or trust money, or property, or releases, discharges or commutes any claim or demand of the State, or which imposes, continues or revives a tax, shall be passed except by the affirmative vote of a majority of all the members elected to each house, the vote to be by the yeas and nays, and the names of the members voting for and against, entered on the journal. Every law imposing, continuing or reviving a tax shall specifically state such tax and no law shall be construed as so stating such tax, which requires a reference to any other law or any other tax. The presiding officer of each house shall, in the presence of the house over which he presides, sign every bill that has been passed by both houses and duly enrolled. Immediately before this is done, all other business being suspended, the title of the bill shall be publicly read., The fact of signing shall be entered on the journal.

Section 51. There shall be a joint committee of the General Assembly, consisting of seven members appointed by tho House of Delegates, and five members appointed by the Senate, which shall be a standing committee on special, private, and local legislation. Before reference to a committee, as provided by section, Fifty, any special, private, or local bill introduced in either house shall be referred to and considered by such joint committee and, returned, to the house in which it originated with a statement in writing whether the object of the bill can be accomplished under general law or by court proceeding; whereupon, the bill, with the accompanying statement, shall take the course provided by section Fifty. The joint committee may be discharged from the consideration of a bill by the house in which it originated, in the manner provided in section Fifty for the discharge of other committees.

Section 52. No law shall embrace more than one object, which shall be expressed in its title; nor shall any law be revived or amended with reference to its title, but the act revived or the section amended shall be reenacted and published at length.

Section 53. No law, except a general appropriation law, shall take effect until at least ninety days after the adjournment of the session of the General Assembly at which it is enacted, unless in, case of an emergency (which emergency shall be expressed in the body of the bill), the General Assembly shall otherwise direct by a vote of four-fifths of the members voting in each house, such vote to be taken by the yeas and nays, and the names of the members voting for and against entered on the journal.

Section 54. The Governor, Lieutenant-Governor, Attorney-General, judges, members of the State Corporation Commission, and executive officers at the seat of government, and all officers appointed by the Governor or elected by the General Assembly, offending against the State by malfeasance in office, corruption., neglect of duty, or other high crime or misdemeanor, may be impeached by the House of Delegates, and prosecuted before the Senate which shall have the sole power to try impeachment. When sitting for that purpose, the senators shall be on oath or affirmation, and no person shall be convicted without the concurrence of two-thirds of the senators present. Judgment in case of impeachment shall not extend further than removal from office and disqualification to hold and enjoy any office of honor, trust, or profit under the State; but the person convicted shall nevertheless be subject to indictment, trial, judgment, and punishment according to law. The Senate may sit during the recess of the General Assembly for the trial of impeachments.

Section 55. The General Assembly shall by law apportion the State into districts, corresponding with the number of representatives to which it may he entitled in the House of Representatives of the Congress of the United States; which districts shall be composed of contiguous and compact territory containing, as nearly as practicable, an equal number of inhabitants.

Section 56. The manner of conducting and making returns of elections, of determining contested elections, and of filling vacancies in office, in cases not specially provided for by this Constitution, shall be prescribed by law, and the General Assembly may declare the cases in which any office shall

be deemed vacant where no provision is made for that purpose in this Constitution

Section 57. The General Assembly shall have power, by a two-thirds vote, to remove disabilities incurred under section Twenty-three, of Article Two, of this Constitution, with reference to duelling.

Section 58. The privilege of the writ of habeas corpus shall not be suspended unless when in cases of invasion or rebellion, the public safety may require. The General Assembly shall not pass any bill of attainder, or any ex post facto law, or any law impairing the obligation of contracts, or any law abridging the freedom of speech or of the press. It shall not enact any law whereby private property shall be taken or damaged for public uses, without just compensation. No man shall be compelled to frequent or support any religious worship, place, or ministry whatsoever, nor shall be enforced, restrained, molested, or burthened in his body or goods, nor shall otherwise suffer on account of his religious opinions or belief; but all men shall be free to profess, and by argument to maintain, their opinions in matters of religion, and the same shall in no wise diminish, enlarge, or affect their civil capacities. And the General Assembly shall not prescribe any religious test whatever, or confer any peculiar privileges or advantages on any sect or denomination, or pass any law requiring or authorizing any religious society, or the. people of any district within this State, to levy on themselves or others any tax for the erection or repair of any house of public worship, or for the support of any church or ministry; but it shall be left free to every person to select his religious instructor, and to make for his support such private contract as he shall please.

Section 59. The General Assembly shall not grant a charter of incorporation to any church or religious denomination, but may secure the title to church property to an extent to be limited by law.

Section 60. No lottery shall hereafter be authorized by law; and the buying, selling, or transferring of tickets or chances in any lottery shall be prohibited.

Section 61. No new county shall be formed with an area of less than six hundred square miles; nor shall the county or counties from which it is formed be reduced below that area; nor shall any county be reduced in population below eight thousand. But any county, the length of which is three times its mean breadth, or which exceeds fifty miles in length, may be divided at the discretion of the General Assembly.

Section 62. The General Assembly shall have full power to enact local option or dispensary laws, or any other laws controlling, regulating, or prohibiting the manufacture or sale of intoxicating liquors.

Section 63. The General Assembly shall confer on the courts power to grant divorces, changethe, names of persons, and direct the sale of estates belonging to infants and other persons under legal disabilities, and shall not, by special legislation, grant relief in these or other cases of which the courts or other tribunals may have jurisdiction. The General Assembly may regulate the exercise by courts of the right to punish for contempt. The General Assembly shall not enact any local, special, or private law in the following cases:

1. For the punishment of crime.
2. Providing a change of venue in civil or criminal cases.
3. Regulating the practice in, or the jurisdiction of, or changing the rules of evidence in, any judicial proceedings or inquiry before, the courts or other tribunals, or providing or changing the methods of collecting debts or enforcing judgments, or prescribing the effect of judicial sales of real estate.
4. Changing or locating county seats.
5. For the assessment and collection of taxes, except as to animals which the General Assembly may deem dangerous to the farming interests.
6. Extending the time for the assessment or collection of taxes.
7. Exempting property from taxation.

8. Remitting, releasing, postponing, or diminishing any obligation or liability of any person, corporation, or association, to the State or to any political subdivision thereof.
9. Refunding money lawfully paid into the treasury of the State or the treasury of any political subdivision thereof.
10. Granting from the treasury of the State, or granting or authorizing to be granted from the treasury of any political subdivision thereof, any extra compensation to any public officer, servant, agent, or contractor.
11. For conducting elections or designating the places of voting.
12. Regulating labor, trade, mining or manufacturing, or the rate of interest on money.
13. Granting any pension or pensions.
14. Creating, increasing, or decreasing, or authorizing to be created, increased, or decreased, the salaries, fees, percentages, or allowances of public officers during the term for which they are elected or appointed.
15. Declaring streams navigable, or authorizing the construction of booms or dams therein, or the removal of obstructions therefrom.
16. Affecting or regulating fencing or the boundaries of land, or the running at large of stock.
17. Creating private, corporations, or amending, renewing, or extending the charters thereof.
18. Granting to any private corporation, association, or individual any special or exclusive right, privilege or immunity.
19. Naming or changing the name of any private corporation or association.
20. Remitting the forfeiture of the charter of any private corporation except upon the condition that such corporation shall thereafter hold its charter subject to the provisions of this Constitution and, the laws passed in pursuance thereof.

Section 64. In all the cases enumerated, in the last section, and in every other case which, in its judgment, may be provided for by general laws, the General Assembly shall enact general laws. Any general law shall be subject to amendment or repeal, but the amendment or partial repeal thereof shall not operate directly or indirectly to enact, and, shall not have the effect of the enactment of a special, private, or local law. No general or special law shall surrender or suspend the right and power of the State, or any political subdivision thereof 'to tax corporations and corporate property, except as authorized by Article Thirteen. No private corporation, association, or individual shall be specially exempted from the operation of any general law, nor shall its operation be suspended for the benefit of any private corporation, association, or individual.

Section 65. The General Assembly may, by general laws, confer upon the boards of supervisors of counties, and the councils of cities and towns, such powers of local and special legislation, as it may from time to time deem expedient, not inconsistent with the limitations contained in this Constitution.

Section 66. The Clerk of the House of Delegates shall be Keeper of the Rolls of the State but shall receive no compensation from the State for his services as such. The General Assembly by general law shall prescribe the number of employees of the Senate and House of Delegates, including the clerks thereof, and fix their compensation at a per diem for the time actually employed in the discharge of their duties.

Section 67. The General Assembly shall not make any appropriation of public funds, of personal property, or of any real estate, to any church, or sectarian society, association, or institution of any kind whatever, which is entirely or partly, directly or indirectly, controlled by any church or sectarian society; nor shall the General Assembly make any like appropriation to any charitable institution, which is not owned or controlled by the State; except that it may, in its discretion, make appropriations to non-sectarian institutions for the reform of youthful criminals; but nothing herein contained shall prohibit

the General Assembly from authorizing counties, cities, or towns to make such appropriations to any charitable institution or association.

Section 68. The General Assembly shall, at each regular session, appoint a standing committee, consisting of two members of the Senate and three members of the House of Delegates, which shall be, known as the Auditing Committee. Such committee shall annually, or oftener in its discretion, examine the books and accounts of the First Auditor, the State Treasurer, the Secretary of the Commonwealth, and other executive officers at the seat of government whose duties pertain to auditing or accounting for the state revenue, report the result of its investigations to the Governor, and cause the same to be published in two newspapers of general circulation in the State. The Governor shall, at the beginning of each session, submit said reports to the General Assembly for appropriate action. The committee may sit during the recess of the General Assembly, receive such compensation as may be prescribed by law, and employ one or more accountants to assist in its investigations.

ARTICLE V
EXECUTIVE DEPARTMENT

Section 69. The chief executive power of the State shall be vested in a Governor., He shall bold office for a term of four years, to commence on the first day of February next succeeding his election, and be ineligible to the same office for the term next succeeding that for which he was elected, and to any other office during his term of service.

Section 70. The Governor shall be elected by the qualified voters of the State at the time and place of choosing members of the General Assembly. Returns of the election shall be transmitted, under seal, by the proper officers, to the Secretary of the Commonwealth, who shall deliver them to the Speaker of the House of Delegates on the, first day of the next session of the General Assembly. The Speaker of the House of Delegates shall within one week thereafter in the presence of a majority of the Senate and of the House of Delegates, open the returns, and the votes shall then be counted. The person having the highest number of votes shall be declared elected; but if two or more shall have the highest and an equal number of votes, one of them shall be chosen Governor by the joint vote of the two houses of the General Assembly. Contested elections for Governor shall be decided by a like vote, and the mode of proceeding in such cases shall be prescribed by law.

Section 71. No person except a citizen of the United States shall be eligible to the office of Governor; and if such person be of foreign birth, he must have been a citizen of the United States for ten years next preceding his election; nor shall any person be eligible to that office unless he shall have attained the age of thirty years, and have been a resident of the State for five years next preceding his election.

Section 72. The Governor shall reside at the seat of government; shall receive five thousand dollars for each year of his service, and while in office shall receive no other emolument from this or any other government.

Section 73. The Governor shall take care that the laws be faithfully executed; communicate to the General Assembly, at every session, the condition of the State; recommend to its consideration such measures as he may deem expedient, and convene the General Assembly on application of two-thirds of the members of both houses thereof, or when, in his opinion, the interest of the State may require. He. shall be commander-in-chief of the land and naval forces of the State; have power to embody the militia to repel invasion, suppress insurrection and enforce the execution of the laws; conduct, either in person or in such manner as shall be prescribed by law, all intercourse with other and foreign states; and, during the recess of the General Assembly, shall have power to suspend from office for misbehavior, incapacity, neglect of official duty, or acts performed without due authority of law, all executive officers at the seat of government except the Lieutenant-Governor; but, in any case in which this power

is so exercised,, the Governor shall report to the General Assembly, at the beginning of the, next session thereof, the fact of such suspension and, the cause therefor, whereupon, the General Assembly shall determine whether such officer shall be restored or finally removed; and the Governor shall have power, during the recess, of the General Assembly, to appoint, pro tempore, successors to all officers so suspended, and to fill, pro tempore, vacancies in all offices of the State for the filling of which the Constitution and, laws make no other provision; but his appointments to such vacancies shall be by commissions to expire at the end, of thirty days after the commencement of the next session of the General Assembly. He shall have power to remit fines and, penalties in such cases, and under such rules and regulations, as may be prescribed by law, and, except when the prosecution has been carried on by the House of Delegates, to grant reprieves and pardons after conviction; to remove political disabilities consequent upon conviction for offences committed prior or subsequent to the adoption of this Constitution, and to commute capital punishment; but he shall communicate to the General Assembly, at each session, particulars of every case of fine or penalty remitted, of reprieve or pardon granted, and of punishment commuted, with his reasons for remitting, granting, or commuting the same.

Section 74. The Governor may require information in writing, under oath, from the officers of the executive department and superintendents of state institutions upon any subject relating to the duties of their respective offices and, institutions; and he may inspect at any time their official books, accounts and vouchers, and, ascertain the condition of the public funds in their charge, and in that connection may employ accountants. He may require the opinion in writing of the Attorney-General upon any question of law affecting the official duties of the Governor.

Section 75. Commissions and grants shall run in the name of the Commonwealth of Virginia, and be attested by the Governor, with the seal of the Commonwealth annexed.

Section 76. Every bill, which shall have passed the Senate and House of Delegates, shall, before it becomes a law, be presented to the Governor. If he approve, he shall sign it; but, if not, he may return it with his objections to the house, in which it originated, which shall enter the objections at large on its journal and proceed, to reconsider the same. If, after such consideration, two-thirds of the members present, which two-thirds shall include a majority of the members elected to that house, shall agree to pass the bill it shall be sent, together with the objections, to the other house, by which it shall, likewise be reconsidered, and if approved, by two-thirds of all the members present, which two-thirds, shall include a majority of the members elected, to that house, it shall become a law, notwithstanding the objections. The Governor shall have the power to veto any particular item or items of an appropriation bill, but the veto shall not affect the item or items to which he does not object. The item or items objected to shall not take effect except in the manner heretofore provided in this section as to bills returned to the General Assembly without his approval. If he approve the general purpose of any bill, but disapprove, any part or parts thereof, he may return it, with recommendations for its, amendment, to the house in which it originated, whereupon the same proceedings shall be had in both houses upon the bill and his recommendations in relation to its amendment, as is above provided in relation to a bill which he shall have returned without his approval, and with his objections thereto: provided, that if after such reconsideration, both houses, by a vote of a majority of the members present in each, shall agree to amend the bill in accordance with his recommendations in relation thereto, or either house by such vote shall fail or refuse to go amend it, then, and in either case the bill shall be again sent to him, and he may act upon it as if it were then before him for the first time. But in all the cases above set forth the votes of both houses shall be determined by ayes and noes, and the names of the members voting for and against the bill, or item or items of an appropriation bill, shall be entered on the journal of each house. If any bill shall not be returned by the Governor within five days (Sunday excepted) after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the

General Assembly shall, by final adjournment. prevent such return; in which case it shall be a law if approved by the Governor in the manner and to the extent above provided, within ten days. after such adjournment, but not otherwise.

Section 77. A Lieutenant-Governor shall be elected at the same time and for the same term as the Governor, and, his qualifications and the manner and ascertainment of his election, in all respects, shall be the same.

Section 78. In case of the removal of the Governor from office, or of his death, failure to qualify, resignation, removal from the State, or inability to discharge the powers and duties of the office, the said office, with its compensation, shall devolve upon the Lieutenant Governor; and the General Assembly shall provide by law for the discharge of the executive functions in other necessary cases.

Section 79. The Lieutenant-Governor shall be president of the Senate, but shall have no vote, except in case of an equal division; and, while acting as such, shall receive a compensation, equal to that allowed to the Speaker of the House of Delegates.

Section 80. A Secretary of the Commonwealth shall be elected by the qualified voters of the State at the same time and for the same term as the Governor; and the fact of his election shall be ascertained as in the case of the Governor. He shall keep a daily record of the official acts of the Governor, which shall be signed by the Governor and attested by the Secretary, and, when required, he shall lay the same, and any papers, minutes and vouchers pertaining to his office, before either house of the General Assembly. He shall discharge such other duties as may be prescribed by law. All fees received by the Secretary of the Commonwealth shall be paid into the treasury monthly.

Section 81. A State Treasurer shall be elected by the qualified voters of the State at the same time and for the same term as the Governor; and the fact of his election shall be ascertained in the same manner. His powers and duties shall be prescribed by law.

Section 82. An Auditor of Public Accounts shall be elected by the joint vote of the two houses of the General Assembly for the term of f our years. His powers and duties shall be prescribed by law.

Section 83. The salary of each officer of the Executive Department, except in those cases where the salary is determined by this Constitution, shall be fixed by law; and the salary of no such officer shall be increased or diminished during the term for which he shall have been elected or appointed.

Section 84. The General Assembly shall provide by law for the establishment and maintenance of an efficient system of checks and balances between the officers at the seat of government entrusted with the collection, receipt, custody, or disbursement of the, revenues of the State.

Section 85. All state officers, and their deputies, assistants or employees, charged with the collection, custody, handling or disbursement of public funds, shall be required to give bond for the faithful performance of such duties; the amount of such bond in each case, and the manner in which security shall be furnished, to be specified, and regulated by law.

Section 86. The General Assembly shall have power io establish and maintain a Bureau of Labor and Statistics, under such regulations as may be prescribed by law.

ARTICLE VI
JUDICIARY DEPARTMENT

Section 87. The Judiciary Department shall consist of a Supreme Court of Appeals, circuit courts, city courts, and such other courts as are hereinafter authorized. The jurisdiction of these tribunals and the judges thereof, except so far as conferred by this Constitution, shall be regulated by law.

Section 88. The Supreme Court of Appeals shall consist of five judges, any three of whom may hold a court. It shall have original jurisdiction in cases of habeas corpus, mandamus, and prohibition; but in all other cases, in which it shall have jurisdiction, it shall have appellate jurisdiction only. Subject to such

reasonable rules, as may be prescribed by law, as to the course of appeal, the limitation as to time, the security required, if any, the granting or refusing of appeals, and the procedure therein, it shall, by virtue of this Constitution, have appellate jurisdiction in all cases involving the constitutionality of a law as being repugnant to the Constitution of this State or of the United States, or involving the life or liberty of any person; and, it shall also have appellate jurisdiction in such other cases, within the limits hereinafter defined, as may be prescribed by law; but no appeal shall be allowed to the Commonwealth in any case involving the life or liberty of a person, except that an appeal by the Commonwealth may be allowed by law in any case involving the violation of a law relating to the state revenue. No bond shall be required, of any accused person as a condition of appeal, but a supersedeas bond may be required where the only punishment imposed in the court below is a fine. The court shall not have jurisdiction in civil cases where the matter in controversy, exclusive of costs and of interest accrued since the judgment in the court below, is less in value or amount than three hundred dollars, except in controversies concerning the title to, or boundaries of land, the condemnation of property, the, probate of a will, the appointment or qualification of a personal representative, guardian, committee, or curator, or concerning a mill, roadway, ferry, or landing, or the right of the State, county or municipal corporation to levy tolls or taxes, or involving the construction of any statute, ordinance or county proceeding imposing taxes; and, except in cases of habeas corpus, mandamus, and prohibition, the constitutionality of a law, or some other matter not merely pecuniary. After the year nineteen hundred and ten the General Assembly may change the jurisdiction of the court in matters merely pecuniary. The assent of at least three of the judges, shall be required for the court to determine that any law is, or is not, repugnant to the Constitution of this State or of the United States; and if, in a case involving the constitutionality of any such law, not more than two of the judges sitting agree in opinion on the constitutional question involved, and the case cannot be determined, without passing on such question, no decision shall be rendered therein, but the case. shall be reheard by a full court; and, in no case where the jurisdiction of the court depends solely upon the fact that the constitutionality of a law is involved, shall the court decide the case upon its merits, unless the contention of the appellant upon the constitutional question be sustained. Whenever the requisite majority of the judges sitting are unable to agree upon a decision, the case shall be reheard by a full bench, and any vacancy caused by any one or more of the judges being unable, unwilling, or disqualified to sit, shall be temporarily filled in a manner to be prescribed by law.

Section 89. The General Assembly may, from time to time, provide for a Special Court of Appeals to try any cases on, the docket of the Supreme Court of Appeals in respect to which a majority of the judges are so situated as to make it improper for them to sit; and also to try any cases on said docket which cannot be disposed of with convenient dispatch. The said special court shall be composed of not less than three nor more than five of the judges of the circuit courts and city courts of record in cities of the first class, or of the judges of either of said courts, or of any of the judges of said courts together with one or more of the judges of the Supreme Court of Appeals.

Section 90. When a judgment or decree is reversed or affirmed by the Supreme Court of Appeals the reasons therefor shall be stated in writing and preserved with the record of the case.

Section 91. The judges of the Supreme Court of Appeals shall be chosen by the joint vote of the two houses of the General Assembly. They shall, when chosen, have, held a judicial station in the United States, or shall have practiced law in this or some other state for five years. At the first election under this Constitution, the General Assembly shall elect the judges for terms of four, six, eight, ten, and twelve years, respectively; and thereafter they shall be elected for terms of twelve years.

Section 92. The officers of the Supreme Court of Appeals shall be appointed by the court or by the judges in vacation. Their duties, compensation, and tenure of office shall be prescribed by law.

Section 93. The Supreme Court of Appeals shall hold its sessions at two or more places in the State, to be fixed by law.

Section 94. The State shall be divided into twenty-four judicial circuits, as follows:

- The counties of Norfolk, Princess Anne, and the city of Portsmouth, shall constitute the first circuit.
- The counties of Nansemond, Southampton, Isle of Wight, and the city of Norfolk, shall constitute the second circuit.
- The counties of Prince George, Surry, Sussex, Greenesville, and Brunswick, shall constitute the third circuit.
- The counties of Chesterfield, Powhatan, Dinwiddie, Nottoway, and Amelia, and the city of
- Petersburg, shall constitute the fourth circuit.
- The counties of Prince Edward,, Cumberland, Buckingham, Appomattox, and Charlotte, shall
- constitute the fifth circuit.
- The counties of Lunenburg, Mecklenburg, Halifax, Campbell, and the city of Lynchburg, shall
- constitute the sixth circuit.
- The counties of Pittsylvania, Franklin, Henry, and Patrick, and the city of Danville, shall
- constitute the seventh circuit.
- The counties of Amherst, Nelson, Albemarle, Fluvanna, and Goochland, shall constitute the
- eighth circuit.
- The counties of Rappahannock, Culpeper, Madison, Greene, Orange, and Louisa, shall
- constitute the ninth circuit.
- The county of Henrico and the city of Richmond, shall constitute the tenth circuit.
- The counties of Accomac, Northampton, Elizabeth City, and the city of Newport News, shall
- constitute the eleventh circuit.
- The counties of Richmond, Northumberland, Westmoreland, Lancaster, and Essex, shall
- constitute the twelfth circuit.
- The counties of Gloucester, Mathews, King and Queen, King William, and Middlesex., shall
- constitute the thirteenth circuit.
- The counties of New Kent, Charles City, York, Warwick, James City, and the city of
- Williamsburg, shall constitute the fourteenth circuit.
- The counties of King George, Stafford, Spotsylvania, Caroline, and Hanover, shall constitute
- the fifteenth circuit.
- The counties of Fauquier, Loudoun, Prince William, Fairfax, and Alexandria, and the city of
- Alexandria, shall constitute the sixteenth circuit.
- The counties of Frederick, Clarke, Warren, Shenandoah, and Page, shall constitute the
- seventeenth circuit.
- The counties of Rockingham, Augusta, and Rockbridge, shall constitute the eighteenth circuit.
- The counties of Highland, Bath, Alleghany, Craig, and Botetourt, shall constitute the nineteenth
- circuit.
- The counties of Bedford, Roanoke, Montgomery, and Floyd, and the city of Roanoke, shall
- constitute the twentieth circuit.
- The counties of Pulaski, Carroll, Wythe, and, Grayson, shall constitute the twenty-first circuit.
- The counties of Bland, Tazewell, Giles, and, Buchanan, shall constitute the twenty-second
- circuit.
- The counties of Washington, Russell, and Smyth, shall constitute the twenty-third circuit.
- The counties of Scott, Lee, Wise, and Dickenson, shall constitute the twenty-fourth circuit.

Section 95. After the first day of January, nineteen hundred and six, as the public interest requires, the General Assembly may rearrange the said circuits and increase or diminish the number thereof. But no new circuit shall be created containing, by the last United States census or other census provided by law, less than forty thousand inhabitants, nor when the effect of creating it will be to reduce the number of inhabitants in any existing circuit below forty thousand according to such census.

Section 96. For each circuit a judge shall be chosen by the joint vote of the two houses of the General Assembly. He shall, when chosen, possess. the same qualifications as judges of the Supreme Court of Appeals, and during his continuance' in office shall reside in the circuit of which he is judge. At the first election under this Constitution, the, General Assembly shall elect, as nearly as practicable, one-fourth of the entire number of judges for terms of two years, one-fourth for four years, one-fourth for six years, and the remaining fourth for eight years., respectively; and thereafter they shall be elected for terms of eight years.

Section 97. The -number of terms of the circuit courts to be held for each county and city, shall be prescribed by law. But no separate circuit court shall be held for any city of the second, class, until the city shall abolish its existing city court. The judge of one circuit may be required or authorized to hold court in any other circuit or city.

Section 98. For the purposes of a judicial system, the cities of the State shall be divided into two classes. All cities shall belong to the first class which contain, as shown by the last United States census or other census provided by law, ten thousand inhabitants or more 'and all cities shall belong to the second class which contain, as thus shown, less than ten thousand inhabitants. In each city of the first class, there shall be, in addition to the circuit court, a corporation court. In any city containing thirty thousand inhabitants or more, the General Assembly may provide for such additional courts as the public interest may require, and in every such city the city courts, as they now exist, shall continue until otherwise provided by law. In every city of the second class, the corporation or hustings court existing, at the time this Constitution goes into effect, shall continue hereafter under the name of the corporation court of such city; but it may be abolished, by a vote of a majority of the qualified electors of such city, at an election held for the, purpose, and whenever the office of judge Of a corporation or hustings court of a city of the second class, whose salary is less than eight hundred dollars, shall become and remain vacant for ninety days consecutively, such court shall thereby cease to exist. In case of the abolition of the corporation or hustings court of any city of the second class, such city shall thereupon come in every respect within the-jurisdiction of the circuit court of the county wherein it is situated, until otherwise provided by law, and, the records of such corporation or hustings court shall thereupon become a part of the records of such circuit court, and be transferred, thereto, and remain therein until otherwise provided by law; and, during the existence of the corporation or hustings court, the circuit court of the county in which such city is situated, shall have concurrent jurisdiction with said corporation or hustings court in all actions at law and suits in equity.

Section 99. For each city court of record a judge shall be chosen by the joint vote of the two houses of the General Assembly. He shall, when chosen, possess the same qualifications as judges of the Supreme Court of Appeals, and during his continuance in office shall reside within the jurisdiction of the court over which he presides; but the judge of the corporation court of any corporation having a city charter, and less than five thousand inhabitants, may reside outside its corporate limits; and the same person may be judge of such corporation court and judge of the corporation court of some other city having less than ten thousand inhabitants. At the first election of said judges under this Constitution, the General Assembly shall elect, as nearly as practicable, one-fourth of the entire number for terms of two years, one-fourth for four years, one-fourth for six years, and the remaining fourth for eight years; and thereafter they shall be elected, for terms of eight years. The judges of city courts in cities of the first

class may be required, or authorized to hold the circuit courts of any county and the circuit courts of any city.

Section 100. The General Assembly shall have power to establish, such court or courts of land registration as it may deem proper for the administration of any law it may adopt for the purpose of the settlement, registration, transfer, or assurance of titles to land in the State, or any part thereof.

Section 101. The General Assembly shall have power to confer upon the clerks of the several circuit courts jurisdiction, to be exercised in the manner and under the regulations to be prescribed by law, in the matter of the admission of wills to probate, and of the appointment and qualification of guardians, personal representatives, curators, appraisers, and committees of the estates of persons who have been adjudged insane or convicted of felony, and in the matter of the substitution of trustees.

Section 102. All the judges shall be commissioned by the Governor. They shall receive such salaries and allowances as may be determined by law within the limitations fixed by this Constitution, the amount of which shall not be increased or diminished during their terms of office. Their terms of office shall commence on the first day of February next following their election, and whenever a vacancy occurs in the office of judge, his successor shall be elected for the unexpired term.

Section 103. The salaries of the judges of the Supreme Court of Appeals shall be not less than four thousand dollars per annum, and shall be paid by the State. The salary of the judge of each circuit court shall be not less than two thousand dollars per annum, one-half of which shall be paid by the State, the other half by the counties and cities composing the circuit, according to their respective population; except that of the salary of the judge of the circuit court of the city of Richmond, the State shall pay the proportion which would otherwise fall to the city of Richmond. The salary of a judge, of a city court in a city of the first class shall be not less than two thousand dollars per annum, one-half of which shall be paid by the State, the other half by the city. The whole of the aforesaid salaries of said judges shall be paid out of the state treasury, the State to be reimbursed by the respective counties and cities. Any city may, by an ordinance, increase the salaries of its city or circuit judges, or any one or more of them as it may deem proper, and the increase shall be paid wholly by the city, but shall not be enlarged or diminished during the term of office of the judge. Each city containing less than ten thousand inhabitants shall pay the salary of the judge of its corporation or hustings court.

Section 104. Judges may be removed from office for cause, by a concurrent vole of both houses of the General Assembly; but a majority of all the members elected to each house must concur in such vote, and the cause of removal shall be entered on the journal of each house. The judge against whom the General Assembly may be about to proceed shall have notice thereof, accompanied by a copy of the causes alleged for his removal, at least twenty days before the day on which either house of the General Assembly shall act thereon.

Section 105. No judge of the Supreme Court of Appeals, of the circuit court, or of any city court of record shall practice law, within or without this State, nor shall he hold any other office of public trust during his. continuance in office; except that the judge of a corporation or hustings court in a city of the second class, may hold the office of commissioner in chancery of the circuit court for the county in which the city is located.

Section 106. Writs shall run in the name of the "Commonwealth of Virginia," and be attested by the clerks of the several courts. Indictments shall conclude "against the peace and dignity of the Commonwealth."

Section 107. An Attorney-General shall be elected by the qualified voters of the State at the same time and for the same term as the Governor; and the fact of his election shall be ascertained in the same manner. He shall be commissioned by the Governor, perform such duties and receive such compensation as may be prescribed by law, and shall be removable in the manner prescribed for the

removal of judges.
Section 108. The General Assembly shall provide for the appointment or election and for the jurisdiction of such justices of the peace as the public interest may require.
Section 109. The General Assembly shall provide by whom, and in what manner, applications for bail shall be heard and determined.

ARTICLE VII
ORGANIZATION AND GOVERNMENT OF COUNTIES
Section 110. There shall be elected, by the qualified voters of each county, one county treasurer, who shall not be elected or serve for more than two consecutive terms, nor act as deputy of his immediate successor; one sheriff, one attorney for the Commonwealth,, and one county clerk, who shall be the clerk of the. circuit court. There shall be elected or appointed, for four years, as the General Assembly may provide, commissioners of the revenue, for each county, the, number, duties and, compensation of whom shall be prescribed by law; but should such commissioners of the revenue be chosen by election by the people then they shall be ineligible for re-election to the office for the next succeeding term. There shall be appointed, for each county, in such manner as may be provided by law, one superintendent of the poor, and one county surveyor.
Section 111. The magisterial districts shall, until changed by law, remain as now constituted: provided, that hereafter no additional districts shall be made containing less than thirty square miles. In each district there shall be elected by the qualified voters thereof, one supervisor. The supervisors of the districts shall constitute the board of supervisors of the county, which shall meet at stated periods and at other times as often as may be necessary, lay the county and district levies, pass upon all claims against the county, subject to such appeal as, may be provided by law, and perform such duties as may be required by law.
Section 112. All regular elections for county and district officers shall be held on Tuesday after the first Monday in November, and all of said officers shall enter upon the duties of their offices on the first day of January next succeeding their election, and shall hold their respective offices for the term of four years, except that the county clerk shall hold office for eight years; provided that the term of the clerks first elected under this Constitution shall begin on the first of February, nineteen hundred and four, and end on the first of January, nineteen hundred and twelve.
Section 113. No person shall at the same time hold more than one of the offices mentioned in this article. Any officer required by law to give bond may be required to give additional security thereon, or to execute a new bond, and in default of so doing his office shall be declared vacant.
Section 114. Counties shall not be made responsible for the acts of the sheriffs.
Section 115. The General Assembly shall provide for the examination of the books, accounts and settlements of county and city officers who are charged with the collection and disbursement of public funds.

ARTICLE VIII
ORGANIZATION AND GOVERNMENT OF CITIES AND TOWNS
Section 116. As used, in this article the words "incorporated communities" shall be construed to relate only to cities and towns. All incorporated communities, having within defined boundaries a population of five thousand or more, shall be known as cities; and, all incorporated communities, having within defined boundaries a population of less than five thousand, shall be known as towns. In determining the population of such cities and towns the General Assembly shall be governed by the last United States census, or such other enumeration as may be made by authority of the General Assembly; but nothing

in this section shall be construed to repeal the charter of any incorporated community of less than five thousand inhabitants having a city charter at the time of the adoption of this Constitution, or to prevent the abolition by such incorporated communities of the corporation or hustings court thereof.

Section 117. General laws for the organization and government of cities and towns shall be enacted by the General Assembly, and no special act shall be passed in relation thereto, except in the manner provided in Article Four of this Constitution, and then only by a recorded vote of two-thirds of the members elected to each house. But each of the cities and towns of the State, having at the time of the adoption of this Constitution a municipal charter may retain the same, except so far as it shall be repealed or amended by the General Assembly: provided, that every such charter is hereby amended so as to conform to all the provisions, restrictions, limitations, and, powers set forth in this article, or otherwise provided in this Constitution.

Section 118. In each city which has a court in whose office deeds are admitted to record, there shall be elected for a term of eight years by the qualified voters' of such city a clerk of said, court, who shall perform such other duties as may be required by law. There shall be elected in like manner and, for a like term all such additional clerks of courts for cities as the General Assembly may prescribe, or as are now authorized by law, so long as such, courts, shall continue in existence. But in no city of less than thirty thousand, inhabitants shall there be more than one clerk of the court, who shall be clerk of all the courts of record in such city.

Section 119. In every city, so long as it has a corporation court, or a separate circuit court, there shall be elected for a term of four years by the qualified voters, of such city, one attorney for the Commonwealth, who shall also, in those cities having a separate circuit court, be the attorney for the Commonwealth, for such circuit court. In every city there shall be elected, or appointed, for a term of four years, in a manner to be provided by law, one commissioner of revenue, whose duties and compensation shall be prescribed by law; but should he be elected, by the people, he shall be ineligible for re-election to the office for the next succeeding term.

Section 120. In every city there shall be elected by the qualified voters thereof one city treasurer, for a term of four years, but he shall not be eligible for more than two consecutive terms, nor act as deputy for his immediate successor; one city sergeant, for a term of four years, whose duties shall be prescribed by law; and, a mayor, for a term of four years, who shall be the chief executive officer of such city. All city and town officers, whose election or appointment is not provided by this Constitution, shall be elected by the electors of such cities and towns, or some division thereof, or appointed by such authorities thereof as the General Assembly shall designate. The mayor shall see that the duties of the various city officers, members of the police and fire departments, whether elected or appointed, in and for such city, are faithfully performed. He shall have power to investigate their acts, have access to all books and documents in their offices, and may examine them and their subordinates on oath. The evidence given by persons so examined shall not be used against them in any criminal proceedings. He shall also have the power to suspend such officers and the members of the police and fire departments when authorized by the General Assembly, for misconduct of office or neglect of duty, to be made without reasonable notice to the officer complained of, and an opportunity afforded him to be heard in person, or by counsel, and to prevent testimony in his defense. From such order of suspension or removal, the city officer so suspended or removed shall have an appeal of right to the corporation court, or, if there be no such court, to the circuit court of such city, in which court the case shall be heard de novo by the judge thereof, whose decision shall be final. He shall have all other powers and duties which may be conferred and imposed upon him by general laws.

Section 121. There shall be in every city a council, composed 'of two branches having a different number of members, whose powers and terms of office shall be prescribed, by law, and whose members

shall be elected by the qualified voters of such city, in, the manner prescribed by law, but so as to give as far as practicable, to each ward, of such city, equal representation in each branch of said council in proportion to the population of such ward; but in cities of under ten thousand population the General Assembly may permit the council to consist of one branch. No member of the council shall be eligible during his tenure of office as such member, or for one year thereafter, to any office to be filled by the council by election or appointment. The council of every city may, in a manner prescribed by law, increase or diminish the number, and change the boundaries, of the wards thereof, and shall, in the year nineteen hundred and three, and in every tenth year thereafter, and also whenever the boundaries of such wards are changed, re-apportion the representation in the council among the ward in a manner prescribed by law; and whenever the council of any such city shall fail to perform the duty so prescribed, a mandamus shall lie on behalf of any citizen thereof to compel its performance.

Section 122. The mayors and councils of cities shall be elected on the second Tuesday in June, and their terms of office shall begin on the first day of September succeeding. All other elective officers, provided for by is article, or hereafter authorized by law, shall be elected, on the Tuesday after the first Monday in November, and their terms of office shall begin the first day of January succeeding, except that the terms of office of clerks of the city courts shall begin coincidently with that of the judges of said courts: provided, that the General Assembly may change the time election of all or any of the said officers, except that the election and the beginning of the terms of mayors and councils of cities shall not be made by the General Assembly to occur at the same time with the election and beginning of the terms of office of the other elective officers provided for by this Constitution.

Section 123. Every ordinance, or resolution having the effect of an ordinance, shall, before it becomes operative, be presented to the mayor. If he approve he shall sign, it, but if not, if the council consist of two branches, he may return it, with his objections in writing, to the clerk, or other recording officer, of that branch in which it originated; which branch shall enter the objections at length on its journal and proceed to reconsider it. If after such consideration two-thirds of all the members elected thereto shall agree to pass the ordinance or resolution it shall be sent, together with the objections, to the other branch, by which it shall likewise be considered, and if approved, by two-thirds of all the members elected thereto, it shall become operative notwithstanding the objections of the mayor. But in all such cases the votes of both branches of the council shall be determined by yeas and nays, and the names of the members voting for and against the ordinance or resolution shall be entered the journal of each branch. If the council consist of a single branch, mayor's objections in writing to any ordinance, or resolution having effect of an ordinance, shall be returned to the clerk, or other recording officer of the council, and be entered at length on its journal; whereupon the council shall proceed to reconsider the same. Upon such consideration the vote shall be taken in the same manner as where the council consists of two branches, and if the ordinance or resolution be approved by two-thirds of all the members elected to the council, it shall become operative notwithstanding the objections of the mayor. If any ordinance or resolution shall not be returned, by the mayor within five days (Sunday excepted), after it shall have been presented, to him, its hall become operative in like manner as if he had. signed it, unless his term of office, or that of the council shall expire within said five days. The mayor shall have the power to veto any particular item or items of an appropriation ordinance or resolution; but the veto shall not affect any item or items to which he does not object. The item or items objected to shall not take effect except in the manner provided in this section as to ordinances or resolutions not approved by the mayor. No ordinance or resolution appropriating money exceeding the sum of one hundred dollars, imposing taxes, or authorizing the borrowing a money, shall be passed, except by a recorded affirmative vote of a majority of all the members elected to the council or to each branch thereof where there are two; and in, case of the veto by the mayor of such ordinance or resolution, it shall require a recorded

affirmative vote of two-thirds of all the members elected to the council, or to each branch thereof where there are two, to pass the same over such veto in the manner provided in this section. Nothing contained in this section shall operate to repeal or amend any provision in any existing city charter requiring a two-thirds vote for the passage of any ordinance as to the appropriation of money, imposing taxes or authorizing the borrowing of money.

Section 124. No street railway, gas, water, steam, or electric heating, electric light or power, cold storage, compressed air, viaduct, conduit, telephone, or bridge, company, nor any corporation, association, person or partnership, engaged in these or like enterprises, shall be permitted to use the streets, alleys, or public grounds of a city or town, without the previous consent of the corporate authorities of such city or town.

Section 125. The rights of no city or town in and to its water front, wharf property, public landings, wharves, docks, streets, avenues, parks, bridges, and other public places, and, its gas, water, and electric works shall be sold except by an ordinance or resolution passed by a recorded affirmative vote of three-fourths of all the members elected to the council, or to each branch thereof where there are two, and under such other restrictions as may be imposed by law; and in case of the veto by the mayor of such an ordinance or resolution, it shall require a recorded affirmative vote of three-fourths of all the members elected to the council, or to each branch thereof where there are two had in, the manner heretofore provided for in this article, to pass the same over the veto. No franchise, lease or right of any kind to use any such public property or any other public property or easement of any description, in a manner not permitted to the general public, shall be granted for a longer period than thirty years. Before granting any such franchise or privilege for a term of years, except for a trunk railway, the municipality shall first, after due advertisement, receive bids therefor publicly, in such manner as may be provided by law, and shall then act as may be required by law. Such grant, and any contract in pursuance thereof, may provide that upon the termination of the grant the plant as well as the property, if any, of the grantee in the streets, avenues, and other public places shall thereupon, without compensation to the grantee, or upon the payment of a fair valuation therefor, be and become the property of the said city or town; but the grantee shall be entitled to no payment by reason of the value of the franchise; and any such plant or property acquired by a city or town may be sold or leased., or, if authorized by law, maintained, controlled and operated, by such city or town. Every such grant shall specify the mode of determining any valuation therein provided for, and shall make adequate provision by way of forfeiture of the grant, or otherwise, to secure efficiency of public service at reasonable rates, and the maintenance of the property in good order throughout the term of the grant. Nothing herein contained shall be construed as preventing the General Assembly from proscribing additional restrictions on the powers of cities and towns in granting franchises or in selling or leasing any of their property, or as repealing any additional restriction now required in relation thereto in any existing municipal charter.

Section 126. The General Assembly shall provide by general laws for the extension and the contraction, from time to time, of the corporate limits of cities and towns; and no special act for such purpose shall be valid.

Section 127. No city or town shall issue any bonds or other interest-bearing obligations for any purpose, or in any manner, to an amount which, including existing indebtedness, shall, at any time, exceed eighteen per centum of the assessed valuation of the real estate in the city or town subject to taxation, as shown by the last preceding assessment for taxes: provided, however, that nothing above contained in this section shall apply to those cities and towns whose charters existing at the adoption of this Constitution authorize a larger percentage of indebtedness than is authorized by this section: and provided further, that in determining the limitation of the power of a city or town to incur indebtedness there shall not be included the following classes of indebtedness:

a) Certificates of indebtedness, revenue bonds or other obligations issued in anticipation of the collection of the revenue of such city or town for the then current year; provided that such certificates, bonds or other obligations mature within one year from the date of their issue, and be not past due, and do not exceed the revenue for such year;
b) Bonds authorized by an ordinance enacted, in accordance with section One Hundred and Twenty-three, and approved by the affirmative vote of the majority of the qualified voters of the city or town voting upon the question of their issuance, at the general election next succeeding the enactment of the ordinance, or at a special election held for that purpose, for a supply of water or other specific undertaking from which the city or town may derive a revenue; but from and after a period to be determined by the council, not exceeding five years from the date of such election, whenever and for so long as such undertaking fails to produce sufficient revenue to pay for cost of operation and administration (including interest on bonds issued therefor, and the cost of insurance against loss by injury to persons or property), and an annual amount to be covered into a sinking fund sufficient to pay, at or before, maturity, all bonds issued on account of said undertaking, all such bonds outstanding shall be included in determining the limitation of the power to incur indebtedness, unless the principal and interest thereof be made payable exclusively from the receipts of the undertaking.

Section 128. In cities and towns the assessment of real estate and personal property for the purpose of municipal taxation, shall be the same as the assessment thereof for the purpose of

ARTICLE IX
EDUCATION AND PUBLIC INSTRUCTION

Section 129. The General Assembly shall establish and maintain an efficient system of public free schools throughout the State.

Section 130. The general supervision of the school system shall be vested in a State Board of Education, composed of the Governor, Attorney-General, Superintendent of Public Instruction, and three experienced educators to be elected quadrennially by the Senate, from a list of eligibles, consisting of one from each of the faculties, and nominated by the respective boards of visitors or trustees, of the University of Virginia, the Virginia Military Institute, the Virginia Polytechnic Institute, the State Female Normal School at Farmville, the School for the Deaf and Blind, and also of the College of William and Mary, so long as the State continue its annual appropriation to the last named, institution. The board thus constituted shall select and associate with itself two division superintendents of schools, one from a county and the other from a city, who shall hold office for two years, and whose powers and duties shall be identical with those of other members, except that they shall not participate in the appointment of any public school official. Any vacancy occurring during the term of any member of the board shall be filled for the unexpired term by said board.

Section 131. The Superintendent of Public Instruction, who shall be an experienced educator, shall be elected by the qualified voters of the State at the same time and for the same term as the Governor. Any vacancy in said office shall be filled for the unexpired term by the said board.

His duties shall be prescribed by the State Board of Education, of which he shall be ex-officio president; and his compensation shall be fixed by law.

Section 132. The duties and powers of the State Board of Education shall be as follows:

- First. It may, in its discretion, divide the State into appropriate school divisions, comprising not less than one county or city each, but no county or city shall be divided in the formation of such divisions. It shall, subject to the confirmation of the Senate, appoint, for each of such divisions, one superintendent of schools, who shall hold office for four years, and shall prescribe his

duties, and may remove him for cause and upon notice.

- Second. It shall have, regulated by law, the management and investment of the school fund.
- Third. It shall have authority to make all needful rules and regulations for the management and conduct of the schools, which, when published and distributed,, shall have the force and, effect of law, subject to the authority of the General Assembly to revise, amend, or repeal the same.
- Fourth. It shall select text books and educational appliances for use in the schools of the State, exercising such discretion as it may see fit in the selection of books suitable for the schools in the cities and counties respectively.
- Fifth. It shall appoint a board of directors, consisting of five members, to serve without compensation, which shall have the management of the State Library, and the appointment of a librarian and other employees thereof, subject to such rules and regulations as the General Assembly shall prescribe; but the Supreme Court of Appeals shall have the management of the law library and, the appointment of the librarian and other employees thereof.

Section 133. Each magisterial district shall constitute a separate school district, unless otherwise provided by law. In each school district there shall be three trustees selected, in the manner and for the term of office prescribed by law.

Section 134. The General Assembly shall set apart as a permanent and perpetual literary fund, the present literary fund of the State; the proceeds of all public lands donated by Congress for public free school purposes; of all escheated property; of all waste and unappropriated lands; of all property accruing to the State by forfeiture, and all fines collected for offences committed against the State, and such other sums as the General Assembly may appropriate.

Section 135. The General Assembly shall apply the annual interest on the literary fund; that portion of the capitation tax provided for in the Constitution to be paid into the state treasury, and not returnable to the counties and cities; and an annual tax on property of not less than one nor more than five mills on the dollar to the schools of the primary and grammar grades, for the equal benefit of all of the people of the State, to be apportioned on a basis of school population; the number of children between the ages of seven and twenty years in each school district to be the basis of such apportionment: but if at any time the several kinds or classes of property shall be segregated for the purposes of taxation, so as to specify and determine upon what subjects state taxes and upon what subjects local taxes may be levied, then the General Assembly may otherwise provide for a fixed appropriation of state revenue to the support of the schools not less than that provided in this section.

Section 136. Each county, city, town if the same be a separate school district, and school district is authorized to raise additional sums by a tax on property, not to exceed in the aggregate five mills on the dollar in any one year, to be apportioned and expended by the local school authorities of said counties, cities, towns and districts in establishing and maintaining such schools as in their judgment the public welfare may require: provided, that such primary schools as may be established in any school year, shall be maintained at least four months of that school year, before any part of the fund assessed and collected may be devoted to the establishment of schools of higher grade. The boards of supervisors of the several counties, and the councils of the several cities, and towns if the same be separate school districts, shall provide for the levy and collection of such local school taxes.

Section 137. The General Assembly may establish agricultural, normal, manual training and technical schools, and such grades of schools as shall be for the public good.

Section 138. The General Assembly may, in its discretion, provide for the compulsory education of children between the ages of eight and twelve years, except such as are weak in body or mind, or can read and write, or are attending private schools, or are excused for cause by the district school trustees.

Section 139. Provision shall be made to supply children attending the public schools with necessary

text-books in cases where the parent or guardian is unable, by reason of poverty, to furnish them.
Section 140. White and colored children shall not be taught in the same school.
Section 141. No appropriation of public funds shall be made to any school or institution of learning not owned or exclusively controlled by the State or some political subdivision thereof:
provided,

- First, that the General Assembly may, in its discretion, continue the appropriations to the College of William and Mary;
- Second, that this section shall not be construed as requiring or prohibiting the continuance or discontinuance by the General Assembly of the payment of interest on certain bonds held by certain schools and colleges as provided by an act of the General Assembly, approved February twenty-third, eighteen hundred and ninety-two, relating to bonds held by schools and colleges;
- Third, that counties, cities, towns, and districts may make appropriations to non-sectarian schools of manual industrial, or technical training, and also to any school or institution of learning owned or exclusively controlled by such county, city, town, or school district.

Section 142. Members of the boards of visitors or trustees of educational institutions shall be appointed as may be provided by law, and shall hold for the term of four years: provided, that at the first appointment, if the board be of an even number, one-half of them, or, if of an odd number, the least majority of them, shall be appointed for two years.

ARTICLE X
AGRICULTURE AND IMMIGRATION

Section 143. There shall be a Department of Agriculture and Immigration, which shall be permanently maintained at the capital of the State, and which shall be under the management and control of a Board of Agriculture and Immigration, composed of one member from each congressional district, who shall be a practical farmer, appointed by the Governor for a term of four years, subject to confirmation by the Senate, and the president of the Virginia Polytechnic Institute, who shall be ex-officio a member of the board: provided, that members of the board first appointed under this Constitution from the congressional districts bearing odd numbers shall hold office for two years.
Section 144. The powers and duties of the board shall be prescribed by law: provided, that it shall have power to elect and remove its officers, and establish elsewhere in the State subordinate branches of said department.
Section 145. There shall be a Commissioner of Agriculture and Immigration, whose term of office shall be four years, and who shall be elected by the qualified voters of the State, and whose powers and duties Shall be prescribed by the Board of Agriculture and Immigration until otherwise provided by law.
Section 146. The president of the Board of Agriculture and Immigration shall be ex-officio a member of the Board of Visitors of the Virginia Polytechnic Institute.

ARTICLE XI
PUBLIC INSTITUTIONS AND PRISONS

Section 147. There shall be a state penitentiary, with such branch prisons and prison farms as may be provided by law.
Section 148. There shall be appointed by the Governor, subject to confirmation by the Senate, a board of five directors which, subject to such regulations and requirements as may be prescribed by law, shall have the government and control of the penitentiary, branch prisons, and prison farms, and shall appoint the superintendents and surgeons thereof. The respective superintendents shall appoint, and may

remove, all other officers and employees of the penitentiary, branch prisons, and prison farms, subject to the approval of the board of directors. The superintendents and surgeons shall be appointed for a term of four years, and be removable by the board of directors for misbehavior, incapacity , neglect of official duty, or acts performed without authority of law. The terms of the directors first appointed shall be one, two, three, four, and five years, respectively; and thereafter, upon the expiration of the term of a director, his successor shall be appointed for a term of five years.

Section 149. For each state hospital for the insane now existing, or hereafter established, there shall be a special board of directors, consisting of three members, who shall be appointed by the Governor, subject to confirmation by the Senate; such board shall have the management of the hospital for which it is appointed, under the supervision and control of the general board of directors hereinafter constituted. The terms of the directors first appointed shall be two, four, and six years, respectively, and, thereafter, upon the expiration of the term of a member, his successor shall be appointed for a term of six years.

Section 150. There shall be a general board of directors for the control and management of all the state hospitals for the insane now existing or hereafter established, which shall consist of all the directors appointed members of the several special boards. The general board of directors shall be subject to such regulations and requirements as the General Assembly may from time to time prescribe, and shall have full power and control over the special boards of directors and all of the officers and employees of the said hospitals.

Section 151. The general board of directors shall appoint for a term of four years a superintendent for each hospital, who shall be removable by said board for misbehavior, incapacity, neglect of official duty, or acts performed without authority of law. The special board of each hospital, shall, subject to the approval of the general board, appoint for a term of four years all other resident officers. The superintendent of each hospital shall appoint, and may remove, with the approval of the special board, all other employees of such hospital.

Section 152. There shall be a Commissioner of State Hospitals for the Insane, who shall be appointed by the Governor, subject to confirmation by the Senate, for a term of four years. He shall be ex-officio chairman of the general and of each of the special boards of directors, and shall be responsible for the proper disbursement of all moneys appropriated or received from any source for the maintenance of such hospitals; he shall cause to be established and, maintained at all of the hospitals a uniform system of keeping the records and the accounts of money received and disbursed and of making the reports thereof. He shall perform such other duties and shall execute such bond and receive such salary as may be prescribed by law.

ARTICLE XII
CORPORATIONS

Section 153. As used in this article, the term "corporation" or "company" shall include all trusts, associations and joint stock companies having any powers or privileges, not possessed by individuals or unlimited partnerships, and exclude all municipal corporations and public institutions owned or controlled by the State; the term "charter" shall be construed to mean the charter of incorporation by, or under, which any such corporation is formed; the term "transportation company" shall include any company, trustee, or other person owning, leasing or operating for hire a railroad, street railway, canal, steamboat or steamship line, and also any freight car company, car association, or car trust, express company, or company trustee or person in any way engaged in business as a common carrier over a route acquired in whole or in part under the right of eminent domain; the term "rate" shall be construed to mean "rate of charge for any service rendered, or to be rendered"; the terms "rate," "charge"and

"regulation," shall include joint rates, joint charges, and joint regulations, respectively; the term "transmission company" shall include any company owning, leasing, or operating for hire, any telegraph or telephone line; the term "freight" shall be construed to mean any property transported, or received for transportation., by any transportation company; the term "public service corporation" shall include all transportation and transmission companies, all gas, electric light, heat and power companies, and all persons authorized to exercise the right of eminent domain, or to use or occupy any street, alley or public highway, whether along, over, or under the same, in a manner not permitted to the general public; the term "person," as used in this article, shall include individuals, partnerships and corporations, in the singular as well as plural number; the term "bond" shall mean all certificates, or written evidences, of indebtedness issued by any corporation and secured by mortgage or trust deed; the term "frank" shall be construed to mean any writing or token, issued by, or under authority of, a transmission company, entitling the holder to any Service from such company free of charge. The provisions of this article shall always be so restricted in their application as not to conflict with any of the provisions of the Constitution of the United States, and as if the necessary limitations upon their interpretation bad been herein expressed in each case.

Section 154. The creation of corporations, and the extension and amendment of charters (whether heretofore or hereafter granted), shall be provided for by general laws, and no charter shall be granted, amended or extended by special act, nor shall authority in such matters be conferred upon any tribunal or officer, except to ascertain whether the applicants have, by complying with the requirements of the law, entitled themselves to the charter, amendment or extension applied for, and to issue, or refuse, the same accordingly. Such general laws may be amended or repealed by the General Assembly; and all charters and, amendments of charters, now existing and revocable, or hereafter granted or extended, may be repealed at any time by special act. Provision shall be made, by general laws, for the voluntary surrender of its charter by any corporation, and for the forfeiture thereof for non-user or mis-user. The General Assembly shall not, by special act, regulate the affairs of any corporation, nor, by such act, give it any rights, powers or privileges.

Section 155. A permanent commission, to consist of three members, is hereby created, which shall be known as the State Corporation Commission. The commissioners shall be appointed by the Governor, subject to confirmation by the General Assembly in joint session, and their regular terms of office shall be six years, respectively, except those first appointed under this Constitution, of whom, one shall be appointed to hold office until the first day of February, nineteen hundred and four, one, until the first day of February, nineteen hundred, and six, and one, until the first day of February, nineteen hundred and eight. Whenever a vacancy in the commission shall occur, the Governor shall forthwith appoint a qualified person to fill the same for the unexpired term, subject to confirmation by the General Assembly as aforesaid. Commissioners appointed for regular terms shall, at the beginning of the terms for which appointed, and those appointed to fill vacancies shall, immediately upon their appointments, enter upon the duties of their office; but no person appointed, either for a regular term, or to fill a vacancy, shall enter upon, or continue in, office after the General Assembly shall have refused to confirm his appointment, or adjourned sine die without confirming the same, nor shall he be eligible for re-appointment to fill the vacancy unused by such refusal or failure to confirm. No person while employed by, or holding any office in relation to, any transportation or transmission company, or while in any wise financially interested therein, or while engaged in practicing law, shall hold office as a member of said commission, or perform any of the duties thereof. At least one of the commissioners shall have the qualifications prescribed for judges of the Supreme Court of Appeals; and any commissioner may be impeached or removed in the manner provided for the impeachment or removal of a judge of said court.. The commission shall annually elect one of their members chairman of the

same, and shall have one clerk, one bailiff and such other clerks, officers, assistants and subordinates as may be provided by law, all of whom shall be appointed, and subject to removal, by the commission. It shall prescribe its own rules of order and procedure, except so far as the same are specified in this Constitution or any amendment thereof. The General Assembly may establish within the department, and subject to the supervision and control, of the commission, subordinate divisions, or bureaus, of insurance, banking or other financial branches of the business of that department. All sessions of the commission shall be public, and a permanent record shall be kept of all its judgments, rules, orders, findings and decisions, and of all reports made to, or by, it. Two of the commissioners shall constitute a quorum for the transaction of business, whether there be a vacancy in the commission or not. The commission shall keep its office open for business on every day except Sundays and legal holidays. Transportation companies shall at all times transport, free of charge, within this State, the members of said commission and its officers, or any of them, when engaged on their official duties. The General Assembly shall provide suitable quarters for the commission and funds for its lawful expenses, including pay for witnesses summoned, and costs of executing processes issued, by the commission of its own motion; and shall fix the salaries of the members, clerks, assistants and subordinates of the commission and provide for the payment thereof; but the salary of each commissioner shall not be less than four thousand dollars per annum. After the first day of January, nineteen hundred and eight, the General Assembly may provide for the election of the members of the commission by the qualified voters of the State; in which event, vacancies thereafter occurring shall be filled as hereinbefore provided, until the expiration of twenty days after the next general election, held not less than sixty days after the vacancy occurs, at which election the vacancy shall be filled for the residue of the unexpired term.

Section 156.

a) Subject to the provisions of this Constitution and to such requirements, rules and, regulations as may be prescribed by law, the State Corporation Commission shall be the department of government through which shall be issued all charters and amendments or extensions thereof, for domestic corporations, and all licenses to do business in this State to foreign corporations; and through which shall be carried out all the provisions of this Constitution, and of the laws made in pursuance thereof, for the creation, visitation, supervision, regulation and control of corporations chartered, by, or doing business in, this State. The commission shall prescribe the forms of all reports which may be required of such corporations by this Constitution or by law; it shall collect, receive, and preserve such reports, and annually tabulate and publish them in statistical form; it shall have all the rights and powers of, and perform all the duties devolving upon, the Railroad Commissioner and the Board of Public Works, at the time this Constitution or may be hereafter abolished or changed by law.

b) The commission shall have the power, and be charged with the duty, of supervising, regulating and controlling all transportation and transmission companies doing business in this State, in all matters relating to the performance of their public duties and their charges therefor, and of correcting abuses therein by such companies; and to that end the commission shall, from time to time, prescribe, and enforce against such companies, in the manner hereinafter authorized, such rates, charges, classifications of traffic, and rules and regulations, and shall require them to establish and maintain all such public service, facilities and conveniences, as may be reasonable and just, which said rates, charges, classifications, rules, regulations and requirements, the commission may, from time to time, alter or amend. All rates, charges, classifications, rules and, regulations adopted, or acted upon, by any such company, inconsistent with those prescribed, by the commission, within the scope of its authority, shall be unlawful and void. The. Commission

shall also have the right at all times to inspect the books and papers of all transportation and transmission companies doing business in this State, and to require from such companies, from time to time, special reports and statements under oath, concerning their business; it shall keep itself fully informed of the physical condition of all the railroads of the State, as to the manner in which they are operated, with reference to the security and accommodation of the public, and shall, from time to time, make and enforce such requirements, rules and regulations as may be necessary to prevent unjust or unreasonable discriminations by any transportation or transmission company in favor of, or against, any person, locality, community, connecting line, or kind of traffic, in the matter of car service, train, or boat schedule, efficiency of transportation or otherwise, in connection with the public duties of such company. Before the commission shall prescribe or fix any rate, charge, or classification of traffic, and before it shall make any order, rule, regulation or requirement directed against any one or more companies by name, the company or companies to be affected by such rate, charge, classification, order, rule, regulation or requirement, shall first be given, by the commission, at least ten days' notice of the time and place, when and where the contemplated action in the premises will be considered and disposed of, and shall be afforded, a reasonable opportunity to introduce evidence and to be heard thereon, to the end that justice may be done, and shall have process to enforce the attendance of witnesses; and before the commission shall make or prescribe any general order, rule, regulation or requirement, not directed against any specific company or companies by name, the contemplated general order, rule, regulation or requirement shall first be published in substance, not less than once a week for four consecutive weeks in one or more of the newspapers of general circulation published in the city of Richmond, Virginia, together with notice of the time and place, when and where the commission will hear any objections which may be urged by any person interested, against the proposed order, rule, regulation or requirement; and every such general order, rule, regulation or requirement, made by the commission shall be published at length, for the time and in the manner above specified, before it shall go into effect, and shall also, as long as it remains in force, be published in each subsequent annual report of the commission. The authority of the commission (subject to review on appeal as hereinafter provided) to prescribe rates, charges and classifications of traffic, for transportation and transmission companies, shall be paramount; but its authority to prescribe any other rules, regulations or requirements for corporations or other persons shall be subject to the superior authority of the General Assembly to 1egislate thereon by general laws: provided, however, that nothing in this section shall impair the right which has heretofore been, or may hereafter be, conferred by law upon the authorities of any city, town or county to prescribe rules, regulations or rates of charge to be observed by any public service corporation in connection with any services performed by it under a municipal or county franchise granted by such city, town or county, so far as such services, may be wholly within the limits of the city, town or county granting the franchise. Upon the request of the parties interested, it shall be the duty of the commission, as, far as possible, to effect, by mediation, the adjustment of claims, and the settlement of controversies, between transportation or transmission companies and their patrons.

c) In all matters pertaining to the public visitation, regulation or control of corporations, and within the jurisdiction of the commission, it shall have the powers and authority of a court of record, to administer oaths, to compel the, attendance of witnesses and the production of papers, to punish for contempt any person guilty of disrespectful or disorderly conduct in the presence of the commission while in session, and to enforce compliance with any of its lawful orders or requirements by adjudging, and enforcing by its own appropriate process, against the delinquent

or offending company (after it shall have been first duly cited, proceeded against by due process of law before the commission sitting as a court, and afforded opportunity to introduce evidence and to be heard, as well against the validity, justness or reasonableness of the order or requirement alleged to have been violated, as against the liability of the company for the alleged violation), such fines or other penalties as may be prescribed or authorized by this Constitution or by law. The commission may be vested with such additional powers, and charged with such other duties (not inconsistent with this Constitution) as may be prescribed by law, in connection with the visitation, regulation or control of corporations, or with the prescribing and enforcing of rates and charges to be observed in the conduct of any business where the State has the right to prescribe the rates and charges in connection therewith, or with the assessment of the property of corporations, or the appraisement of their franchises, for taxation, or with the investigation of the subject of taxation generally. Any corporation failing or refusing to obey any valid order or requirement of the commission, within such reasonable time, not less than ten days, as shall be fixed in the order, may be fined by the commission (proceeding by due process of law as aforesaid) such sum, not exceeding five hundred dollars, as the commission may deem proper, or such sum, in excess of five hundred dollars, as may be prescribed, or authorized, by law; and each day's continuance of such failure or refusal, after due service upon such corporation of the order or requirement of the commission, shall be a separate offence: provided, that should the operation of such order or requirement be suspended pending an appeal therefrom, the period of such suspension shall not be computed against the company in the matter of its liability to fines or penalties.

d) From any action of the commission prescribing rates, charges or classifications of traffic, or affecting the train schedule of any transportation company, or requiring additional facilities, conveniences or public service of any transportation or transmission company, or refusing to approve a suspending bond, or requiring additional security thereon or an increase thereof, as provided for in sub-section (e) of this section, an appeal (subject to such reasonable limitations as to time, regulations as to procedure and, provisions as to costs, as may be prescribed by law) may be taken by the corporation whose rates, charges or classifications of traffic, schedule, facilities, conveniences or service, are affected, or by any person deeming himself aggrieved, by such action, or (if allowed by law) by the Commonwealth. Until otherwise provided by law, such appeal shall be taken in the manner in which appeals may be taken to the Supreme Court of Appeals from the inferior courts, except that such an appeal shall be of right, and the Supreme, Court of Appeals may provide by rule for proceedings in the matter of appeals in any particular in which the existing rules of law are inapplicable. If such appeal be taken by the corporation whose rates, charges or classifications of traffic, schedules, facilities, conveniences or service are affected, the Commonwealth shall be made the appellee; but, in the other cases mentioned, the corporation so affected shall be made the appellee. The General Assembly may also, by general laws, provide for appeals from any other action of the commission, by the Commonwealth or by any person interested, irrespective of the amount involved. All appeals from the commission shall be to the Supreme Court of Appeals only; and in all appeals to which the Commonwealth is a party, it shall be represented by the Attorney-General or his legally appointed representative. No court of this Commonwealth (except the Supreme Court of Appeals, by way of appeals as herein authorized), shall have jurisdiction to review, reverse, correct or annul any action of the commission, within the scope of its authority, or to suspend or delay the execution, or operation thereof, or to enjoin, restrain or interfere with the commission in the performance of its official duties: provided, however, that the writs of mandamus and

prohibition shall lie from the Supreme Court of Appeals to the commission in all cases where such writs, respectively, would lie to any inferior tribunal or officer.

e) Upon the granting of an appeal, a writ of supersedeas may be awarded by the appellate court, suspending the operation of the action appealed from until the final disposition of the appeal; but, prior to the final reversal thereof by the appellate court, no action of the commission prescribing or affecting the rates, charges or classifications of traffic of any transportation or transmission company shall be delayed, or suspended, in its operation, by reason of any appeal by such corporation, or by reason of any proceedings resulting from such appeal, until a suspending bond shall first have been executed and filed with, and approved by, the commission (or approved on review by the Supreme Court of Appeals), payable to the Commonwealth, and sufficient in amount and security to insure the prompt refunding, by the appealing corporation to the parties entitled thereto, of all charges which such company may collect or receive, pending the appeal, in excess of those fixed, or authorized, by the final decision of the court on appeal. The commission, upon the execution of such bond, shall forthwith require the appealing company, under penalty of the immediate enforcement (pending the appeal and notwithstanding any supersedeas),of the order or requirement appealed from, to keep such accounts, and to make to the commission, from time to time, such reports, verified by oath, as may, in the judgment of the commission, suffice to show the amounts being charged or received by the company, pending the appeal, in excess of the charge allowed by the action of the commission appealed from, together with the names and addresses of the persons to whom such overcharges will be refundable in case the charges made by the company pending the appeal, be not sustained on such appeal; and the commission shall also, from time to time, require such company, under like penalty, to give additional security on, or to increase, the said suspending bond, whenever, in the opinion of the commission, the same may be, necessary to insure the prompt refunding of the overcharges aforesaid. Upon the final decision of such appeal, all amounts which the appealing company may have collected, pending the appeal, in excess of that authorized by such final decision, shall be promptly refunded by the company to the parties entitled thereto, in such manner, and through such methods of distribution, as may be prescribed by the commission, or by law. All such appeals affecting rates, charges or classifications of traffic, shall have precedence upon the docket of the appellate court, and shall be heard and disposed of promptly by the court, irrespective of its place of session, next after the habeas corpus, and Commonwealth's, cases already on the docket of the court.

f) In no case of appeal from the commission shall any new or additional evidence be introduced in the appellate court; but the chairman of the commission, under the seal of the commission, shall certify to the appellate court all the facts upon which the action appealed from was based and which may be essential for the proper decision of the appeal, together with, such of the evidence introduced before, or considered by, the commission as may be selected, specified and required to be certified, by any party in interest, as well as such other evidence, so introduced or considered, as the commission may deem proper to certify. The commission shall, whenever an appeal is taken therefrom, file with the record of the case, and as a part thereof, a written statement of the reasons upon which the action appealed from was based, and such statement shall be read and considered by the appellate court, upon disposing of the appeal. The appellate, court shall have jurisdiction, on such appeal, to consider and determine the reasonableness and justness of the action of the commission appealed from, as well as any other matter arising under such appeal: provided, however, that the action of the commission appealed from shall be regarded as prima facie just, reasonable and correct; but the court may, when it deems necessary,

in the interest of justice, remand to the commission any case pending on appeal, and require the same to be further investigated by the commission, and reported upon to the court (together with a certificate of such additional evidence as may be tendered before the commission by any party in interest), before the appeal is finally decided.

g) Whenever the court, upon appeal, shall reverse an order of the commission affecting the rates, charges or the classification of traffic of any transportation or transmission company, it shall, at the same time, substitute therefor such order as, in its, opinion, the commission should have made at the time of entering the order appealed from; otherwise the reversal order shall not be valid. Such substituted order shall have the same force and effect (and none other) as if it had been entered by the commission at the time the original order appealed from was entered. The right of the commission to prescribe and enforce rates, charges, classifications, rules and regulations, affecting any or all actions of the commission theretofore entered by it and appealed from, but based upon circumstances or conditions different from those existing at the time the order appealed from was made, shall not be suspended or impaired by reason of the pendency of such appeal; but no order of the commission prescribing or altering such rates, charges, classifications, rules or regulations, shall be retroactive.

h) The right of any person to institute and prosecute in the ordinary courts of justice, any action, suit or motion against any transportation or transmission company, for any claim or cause of action against such company, shall not be extinguished or impaired, by reason of any fine or other penalty which the commission may impose, or be authorized to impose, upon such company because of its breach of any public duty, or because of its failure to comply with any order or requirement of the commission; but, in no such proceeding by any person against such corporation, nor in any collateral proceeding, shall the reasonableness, justness or validity of any rate, charge, classification of traffic, rule, regulation or requirement, theretofore prescribed by the commission, within the scope of its authority, and then in force, be questioned: provided, however, that no case based upon or involving any order of the commission shall be heard, or disposed of, against the objection of either party, so long as such order is suspended in its operation by an order of the Supreme Court of Appeals as authorized by this Constitution or by any law passed in pursuance thereof.

i) The commission shall make annual reports to the Governor of its proceedings, in which reports it shall recommend, from time to time, such new or additional legislation in reference to its powers or duties, or to the creation, supervision, regulation or control of corporations, or to the subject of taxation, as it may deem wise or expedient, or as may be required by law.

j) Upon the organization of the State Corporation Commission, the Board of Public Works andthe office of Railroad Commissioner, shall cease to exist; and all books, papers and documents pertaining thereto, shall be transferred to, and become a part of the records of, the office of the State Corporation Commission.

k) After the first day of January, nineteen hundred and five, in addition to the modes of amendment provided for in Article Fifteen of this Constitution, the General Assembly, upon the recommendation of the State Corporation Commission, may, by law, from time to time, amend sub-sections (a) to(i), inclusive, of this section, or any of them, or any such amendment thereof: provided, that no amendment made under authority of this sub-section shall contravene the provisions of any part of this Constitution other than the sub-sections last above referred to or any such amendment thereof.

Section 157. Provision shall be made by general laws for the payment of a fee to the Commonwealth by every domestic corporation, upon the granting, amendment or extension of its charter, and by every

foreign corporation upon obtaining a license to do business in this State as specified in this section; and also for the payment, by every domestic corporation, and foreign corporation doing business in this State, of an annual registration fee of not less than five dollars nor more than twenty-five dollars, which shall be irrespective of any specific license, or other, tax imposed by law upon such company for the privilege of carrying on its business in this State, or upon its franchise or property; and for the making, by every such corporation (at the time of paying such annual registration fee), of such report to the State Corporation Commission, of the status, business or condition of such corporation, as the General Assembly may prescribe. No foreign corporation shall have authority to do business in this State, until it shall have first obtained from the commission a license to do business in this State, upon such terms and conditions as may be prescribed by law. The failure by any corporation for two successive years to pay its annual registration fee, or to make its said annual reports, shall, when such failure shall have continued for ninety days after the expiration of such two years, operate as a revocation and annulment of the charter of such corporation if it be a domestic company, or, of its license to do business in this State if it be a foreign company; and the General Assembly shall provide additional and suitable penalties for the failure of any corporation to comply promptly with the requirements of this section, or of any laws passed in pursuance thereof. The commission shall compel all corporations to comply promptly with such requirements, by enforcing, in the manner hereinbefore authorized, such fines and penalties against the delinquent company as may be provided for, or authorized by, this article; but the General Assembly may relieve from the payment of the said registration fee any purely charitable institution or institutions.

Section 158. Every corporation heretofore chartered in this State, which shall hereafter accept, or effect, any amendment or extension of its charter, shall be conclusively presumed to have thereby surrendered every exemption from taxation, and every non-repealable feature of its charter and of the amendments thereof, and also all exclusive rights or privileges theretofore granted to it by the General Assembly and not enjoyed by other corporations of a similar general character; and to have thereby agreed to thereafter hold its charter and franchises, and all amendments thereof, under the provisions and subject to all the requirements, terms and conditions of this Constitution and of any laws passed in pursuance thereof, so far as the same may be applicable to such corporation.

Section 159. The exercise of the right of eminent domain shall never be abridged, nor so construed as to prevent the General Assembly from taking the property and franchises of corporations and subjecting them to public use, the same as the property of individuals; and the exercise of the police power of the State shall never be abridged, nor so construed as to permit corporations to conduct their business in such manner as to infringe the equal rights of individuals or the general well being of the State.

Section 160. No transportation or transmission company shall charge or receive any greater compensation, in the aggregate, for transporting the same class of passengers or property, or for transmitting the same class of messages, over a shorter than over a longer distance, along the same line and in the same direction-the shorter being included in the longer distance; but this section shall not be construed as authorizing any such company to charge or receive as great compensation for a shorter as for a longer distance. The State Corporation Commission may, from time to time, authorize any such company to disregard the foregoing provisions of this section, by charging such rates as the commission may prescribe as just and equitable between such company and the public, to or from any junctional or competitive points or localities, or where the competition of points located without this State may make necessary the prescribing of special rates for the protection of the commerce of this State; but this section shall not apply to mileage tickets, or to any special excursion, or commutation, rates, or to special rates for services rendered to the government of this State, or of the United States, or in the interest of some public object, when such tickets or rates shall have been prescribed or authorized by

the commission.

Section 161. No transportation or transmission company doing business in this State shall grant to any member of the General Assembly, or to any state, county, district or municipal officer, except to members and officers of the State Corporation Commission for their personal use while in office, any frank, free pass, free transportation, or any rebate or reduction in the rates charged by such company to the general public for like services. For violation of the provisions of this section the offending company shall be liable to such penalties as may be prescribed by law; and any member of the General Assembly, or any such officer, who shall, while in office accept any gift, privilege or benefit as is prohibited by this section, shall thereby forfeit his office, and be subject to such further penalties as may be prescribed by law; but this section shall not prevent a street railway company from transporting free of charge any member of the police force or fire department while in the discharge of his official duties, nor prohibit the acceptance by any such policeman or fireman of such free transportation.

Section 162. The doctrine of fellow-servant, so far as it affects the liability of the master for injuries to his servant resulting from the acts or omissions of any other servant or servants of the common master, is, to the extent hereinafter stated, abolished as to every employee of a railroad company, engaged in the physical construction, repair or maintenance of its roadway, track or any of the structures connected therewith, or in any work in, or upon, a car or engine standing upon a track, or in the physical operation of a train, car, engine, or switch, or in any service requiring his presence upon a train, car or engine; and every such employee shall have the same right to recover for every injury suffered by him from the acts or omissions of any other employee or employees of the common master, that a servant would have (at the time when this Constitution goes into effect), if such acts or omissions were those of the master himself in the performance of a non-assignable duty: provided, that the injury, so suffered by such railroad employee, result from the negligence of an officer, or agent, of the company of a higher grade of service than himself, or from that of a person, employed by the company, having the right, or charged with the duty, to control or direct the general services or the immediate work of the party injured, or the general services or the immediate work of the co-employee through, or by, whose act or omission he is injured; or that it result from the negligence of a co-employee engaged in another department of labor, or engaged upon, or in charge of, any car upon which, or upon the train of which it is a part, the injured employee is not at the time of receiving the injury, or who is in charge of any switch, signal point, or locomotive engine, or is charged with dispatching trains or transmitting telegraphic or telephonic orders therefor; and whether such negligence be in the performance of an assignable or non-assignable duty. The physical construction, repair or maintenance of the roadway, track or any of the structures connected therewith, and the physical construction, repair, maintenance, cleaning or operation of trains, cars or engines, shall be regarded as different departments of labor within the meaning of this section. Knowledge, by any such railroad employee injured, of the defective or unsafe character or condition of any machinery, ways, appliances or structures, shall be no defence to an action for injury caused thereby. When death, whether instantaneous or not, results to such an employee from any injury for which he could have recovered, under the above provisions, had death not occurred, then his legal or personal representative, surviving consort, and relatives (and any trustee, curator, committee or guardian of such consort or relatives) shall, respectively, have the same rights and remedies with respect thereto as if his death had been caused by the negligence of a co-employee while in the performance, as vice-principal, of a non-assignable duty of the master. Every contract or agreement, express or implied, made by an employee, to waive the benefit of this section, shall be null and void. This section, shall not be construed to deprive any employee, or his legal or personal representative, surviving consort or relatives (or any trustee, curator, committee or guardian of such consort or relatives), of any rights or remedies that be or they may have by the law of the land, at the time this Constitution goes into effect.

Nothing contained in this section shall restrict the power of the General Assembly to further enlarge, for the above-named class of employees, the rights and remedies hereinbefore provided for, or to extend such rights and remedies to, or otherwise enlarge the present rights and remedies of, any other class of employees of railroads or of employees of any person, firm or corporation.

Section 163. No foreign corporation shall be authorized to carry on, in this State, the business, or to exercise any of the powers or functions, of a public service corporation, or be permitted to do anything which domestic corporations are prohibited from doing, or be relieved from compliance with any of the requirements made of similar domestic corporations by the Constitution and laws of this State, where the same can be made applicable to such foreign corporation without discriminating against it. But this section shall not affect any public service corporation whose line or route extends across the boundary of this Commonwealth, nor prevent any foreign corporation from continuing in such lawful business as it may be actually engaged in within this State, when this Constitution goes into effect; but any such foreign public service corporation, so engaged, shall not, without first becoming incorporated under the laws of this State, be authorized to acquire, lease, use or operate, within this State, any public or municipal franchise or franchises in addition to such as it may own, lease, use or operate when this Constitution goes into effect. The property, within this State, of foreign corporations shall always be subject to attachment, the same as that of non-resident individuals; and nothing in this section shall restrict the power of the General Assembly to discriminate against foreign corporations whenever, and in whatsoever respect, it may deem wise or expedient.

Section 164. The right of the Commonwealth, through such instrumentalities as it may select, to prescribe and define the public duties of all common carriers and public service corporations, to regulate and control them in the performance of their public duties, and to fix and limit their charges therefor, shall never be surrendered nor abridged.

Section 165. The General Assembly shall enact laws preventing all trusts, combinations and monopolies, inimical to the public welfare.

Section 166. The exclusive right to build or operate railroads parallel to its own, or any other, line of railroad, shall not be granted to any company; but every railroad company shall have the right, subject to such reasonable regulations as may be prescribed by law, to parallel, intersect, connect with or cross, with its roadway, any other railroad or railroads; but no railroad company shall build or operate any line of railroad not specified in its charter, or in some amendment thereof. All railroad companies, whose lines of railroad connect, shall receive and transport each other's, passengers, freight, and loaded or empty cars, without delay or discrimination. Nothing in this section shall deprive the General Assembly of the right to prevent by statute, repealable at pleasure, any railroad from being built parallel to the present line of the Richmond, Fredericksburg and Potomac railroad.

Section 167. The General Assembly shall enact general laws regulating and controlling all issues of stock and bonds by corporations. Whenever stock or bonds are to be issued, by a corporation, it shall, before issuing the same, file with the State Corporation Commission a statement (verified by the oath of the president or secretary of the corporation, and in such form as may be prescribed or permitted by the commission) setting forth fully and accurately the basis, or financial plan, upon which such stock or bonds are to be issued; and where such basis or plan includes services or property (other than money), received or to be received by the company, such statement shall accurately specify and describe, in the manner prescribed, or permitted, by the commission, the services and property, together with the valuation at which the same are received or to be received; and such corporation shall comply with any other requirements or restrictions which may be imposed by law. The General Assembly shall provide adequate penalties for the violation of this section, or of any laws passed in pursuance thereof; and it shall be the duty of the commission to adjudge, and enforce (in the manner hereinbefore provided),

against any corporation refusing or failing to comply with the provisions of this section, or of any laws passed in pursuance thereof, such fines and penalties as are authorized by this Constitution, or may be prescribed by law.

ARTICLE XIII
TAXATION AND FINANCE

Section 168. All property, except as hereinafter provided, shall be taxed; all taxes, whether state, local, or municipal, shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws.

Section 169. Except as, hereinafter provided, all assessments of real estate and tangible personal property shall be at their fair market value, to be ascertained as prescribed by law. The General Assembly may allow a lower rate of taxation to be imposed for a period of years by a city or town upon land added to its corporate limits, than is imposed on similar property within its limits at the time such land is added. Nothing in this Constitution shall prevent the General Assembly, after the first day of January, nineteen hundred and thirteen, from segregating for the purposes of taxation, the several kinds or classes of property, so as to specify and determine upon what subjects, state taxes, and upon what subjects, local taxes may be levied.

Section 170. The General Assembly may levy a tax on incomes in excess of six hundred dollars per annum; may levy a license tax upon any business which cannot be reached by the ad valorem system; and may impose state franchise taxes, and in imposing a franchise tax, may, in its discretion, make the same in lieu of taxes upon other property, in whole or in part, of a transportation, industrial, or commercial corporation. Whenever a franchise tax shall be imposed upon a corporation doing business in this State, or whenever all the capital, however invested, of a corporation chartered under the laws of this State, shall be taxed, the shares of stock issued by any such corporation, shall not be further taxed. No city or town shall impose any tax or assessment upon abutting land owners for street or other public local improvements, except for making and improving the walkways upon then existing streets, and improving and paving then existing alleys, and for either the construction, or for the use of sewers; and the same when imposed, shall not be in excess of the peculiar benefits resulting therefrom to such abutting land owners. Except in cities and towns, no such taxes or assessments, for local public improvements shall be imposed on abutting land owners.

Section 171. The General Assembly shall provide for a re-assessment of real estate, in the year nineteen hundred and five, and every fifth year thereafter, except that of railway and canal corporations, which, after January the first, nineteen hundred and thirteen, may be assessed as the General Assembly may provide.

Section 172. The General Assembly shall provide for the special and separate assessment of all coal and other mineral land; but until such special assessment is made, such land shall be assessed, under existing laws.

Section 173. The General Assembly shall levy a state capitation tax of, and not exceeding, one dollar and fifty cents per annum on every male resident of the State not less than twenty-one years of age, except those pensioned by this State for military services; one dollar of which shall be applied exclusively in aid of the public free schools, in proportion to the school population, and the residue shall be returned and paid by the State into the treasury of the county or city, in which it was collected, to be appropriated by the proper county or city authorities to such county or city purposes as they shall respectively determine; but said state capitation tax shall not be a lien upon, nor collected by legal process from, the personal property which may be exempt from levy or distress under the poor debtor's law., The General Assembly may authorize the board of supervisors of any county, or the council of any

city or town, to levy an additional capitation tax not exceeding one dollar per annum on every such resident within its limits, which shall be applied in aid of the public schools of such county, city or town, or for such other county, city or town purposes as they shall determine.

Section 174. After this Constitution shall be in force, no statute of limitation shall run against any claim of the State for taxes upon any property; nor shall the failure to assess property for taxation defeat a subsequent assessment for and collection of taxes for any preceding year or years, unless such property shall have passed to a bona fide purchaser for value, without notice; in which latter case the property shall be assessed for taxation against such purchaser from the date of his purchase.

Section 175. The natural oyster beds, rocks, and shoals, in the waters of this State, shall not be leased, rented or sold, but shall be held in trust for the benefit of the people of this State, subject to such regulations and restrictions as the General Assembly may prescribe, but the General Assembly may, from time to time, define and determine such natural beds, rocks or shoals, by surveys or otherwise.

Section 176. The State Corporation Commission shall annually ascertain and assess, at the time hereinafter mentioned, and in the manner required of the Board of Public Works, by the law in force on January the first, nineteen hundred and two, the value of the roadbed, and other real estate, rolling stock, and all other personal property whatsoever (except its franchise and the nontaxable, shares of stock issued by other corporations) in this State, of each railway corporation, whatever its motive power, now or hereafter liable for taxation, upon such property; the canal bed and other real estate, the boats and all other personal property whatsoever (except its franchise and the non-taxable shares of stock issued by other corporations) in this State, of each canal corporation, empowered to conduct transportation; and such property shall be taxed for state, county, city, town, and district purposes in the same manner as authorized by said law, at such rates of taxation as may be imposed by them, respectively, from time to time, upon the real estate and personal property of natural persons: provided, that no tax shall be laid upon the net income of such corporations.

Section 177. Each such railway or canal corporation, including also any such as is exempt from taxation as to its works, visible property, or profits, shall also pay an annual state franchise tax equal to one per centum upon the gross receipts hereinafter specified in section One Hundred and Seventy-eight, for the privilege of exercising its franchises in this State, which, with the taxes provided for in section One Hundred and Seventy-six, shall be in lieu of all other taxes or license charges whatsoever upon the franchises of such corporation, the shares of stock issued by it, and upon its property assessed under section One Hundred and Seventy-six: provided, that nothing herein contained shall exempt such corporation from the annual fee required by section One Hundred and Fifty-seven of this Constitution, or from assessments for street and other public local improvements authorized by section One Hundred and Seventy; and provided, further, that nothing herein contained shall annul or interfere with, or prevent any contract or agreement by ordinance between street railway corporations and municipalities, as to compensation for the use of the streets or alleys of such municipalities by such railway corporations.

Section 178. The amount of such franchise tax shall be equal to one per centum of the gross transportation receipts of such corporations for the year ending June the thirtieth of each year, to be ascertained by the State Corporation Commission, in the following manner:

a) When the road or canal of the corporation, lies wholly within this State, the tax shall be equal to one per centum of the entire gross transportation receipts of such corporation.
b) When the road or canal of the corporation lies partly within and partly without this State, or is operated as a part of a line or system extending beyond this State, the tax shall be equal to one per centum of the gross transportation receipts earned within this State, to be determined as follows: By ascertaining the average gross transportation receipts per mile over its whole extent

within and without this State, and multiplying the result by the number of miles operated within this State: provided, that from the sum so ascertained there, may be a reasonable deduction because of any excess of value of the terminal facilities or other similar advantages in other states over similar facilities or advantages in this State.

Section 179. Each corporation mentioned in sections One Hundred and Seventy-six and One Hundred and Seventy-seven shall annually, on the first day of September, make to the State Corporation Commission the report which the law, in force January the first, nineteen hundred and two, required to be made annually to the Board of Public Works by every railroad and canal company in this State, not exempt from taxation by virtue of its charter, which report shall also show the property taxable in this State belonging to the corporation on the thirtieth day of June preceding, and its total gross transportation receipts for the year ending on that date. Upon receiving such report the State Corporation Commission shall, after thirty days' notice previously given, as provided by said law, assess the value of the property not exempt from taxation, of the corporation, and ascertain the amount of the franchise tax and other state taxes chargeable against it. All taxes for which the corporation is liable shall be paid on or before the first day of December following. The provisions of said law, except as changed by this article, shall apply to the ascertainment and collection of the franchise, as well as other taxes of such corporations. Said taxes, until paid, shall be a lien upon the property within this State of the corporation owning the same, and take precedence of all other liens or encumbrances.

Section 180. Any corporation aggrieved by the assessment and ascertainment made under sections One Hundred and Seventy-six and One Hundred and Seventy-eight may, within thirty days after receiving a certified copy thereof, apply for relief to the circuit court of the city of Richmond. Notice of the application, setting forth the grounds of complaint, verified by affidavit, shall be served on the State Corporation Commission, and on the Attorney-General whose duty it shall be to represent the State. The court, if of opinion that the assessment or tax is excessive, shall reduce the same; but, if of opinion, that it is insufficient, shall increase the same. Unless the applicant paid the taxes under protest, when due, the court, if it disallow the application, shall give judgment against it for a sum, by way of damages, equal to interest at the rate of one per centum per month upon the amount of taxes from the time the same were payable. If the application be allowed, in whole or in part, appropriate relief shall be granted, including the right to recover any excess of taxes that may have been paid, with legal interest thereon, and costs, from the State or local authorities, or both, as the case may be; the judgment to be enforceable by mandamus or other proper process issuing from the court finally adjudicating the application. Subject to the provisions of Article Six of this Constitution, the Supreme Court of Appeals may allow a writ of error to either party.

Section 181. After January the first, nineteen hundred and three, the system of taxation, as to the corporations mentioned in sections One Hundred and Seventy-six and One Hundred and Seventy-seven, shall be as set forth in sections One Hundred and Seventy-six to One Hundred and Eighty, inclusive; and for that year the franchise tax shall be based upon such gross receipts for the year ending the thirtieth day of June, nineteen hundred and three, and such system shall so remain until the first day of January, nineteen hundred and thirteen, and thereafter until modified or changed, as may be prescribed by law: provided, that, if the said system shall for any reason become inoperative, the General Assembly shall have power to adopt some other system.

Section 182. Until otherwise prescribed by law, the shares of stock issued by trust or security companies chartered by this State, and by incorporated banks, shall be taxed in the same manner in which the shares of stock issued by incorporated banks were taxed, by the law in force January the first, nineteen hundred and two; but from the total assessed value of the shares of stock of any such company or bank, there shall be deducted the assessed value of its real estate otherwise taxed in this State, and the value

of each share of stock shall be its proportion of the. remainder.

Section 183. Except as otherwise provided in this Constitution, the following property and no other, shall be exempt from taxation, state and local; but the General Assembly may hereafter tax any of the property hereby exempted, save that mentioned in sub-section (a):

a) Property directly or indirectly owned by the State, however held, and property lawfully owned and held by counties, cities, towns, or school districts, used wholly and exclusively for county, city, town, or public school purposes, and obligations issued by the State since the fourteenth day of February, eighteen hundred and eighty-two or hereafter exempted by law.

b) Buildings with land they actually occupy, and the furniture and furnishings therein lawfully owned and held by churches or religious bodies, and wholly and exclusively used for religious worship, or for the residence of the minister of any such church or religious body, together with the additional adjacent land reasonably necessary for the convenient use of any such building.

c) Private family burying-grounds not exceeding one, acre in area, reserved as such by will or deed., or shown by other sufficient evidence to be reserved as such, and, so exclusively used, and public burying-grounds and lots therein exclusively used for burial purposes, and not conducted for profit, whether owned or managed by local authorities or by private corporations.

d) Buildings with the land they actually occupy and the furniture, furnishings, books and

e) instruments therein, wholly devoted to educational purposes, belonging to, and actually and exclusively occupied and used by churches, public libraries, incorporated colleges, academies, industrial schools, seminaries, or other incorporated institutions of learning, including the Virginia Historical Society, which are not corporations having shares of stock or otherwise owned by individuals or other corporations; together with such additional adjacent land owned by such churches, libraries and educational institutions as may be reasonably necessary for the convenient use of such buildings, respectively; and also the buildings thereon used as residences by the officers or instructors of such educational institutions; and also the permanent endowment funds held by such libraries and educational institutions directly or in trust, and not invested in real estate: provided, that such libraries and educational institutions are not conducted for profit of any person or persons, natural or corporate, directly, or under any guise or pretence whatsoever. But the exemption mentioned in this sub-section shall not apply to any industrial school, individual or corporate, not the property of the State which does work for compensation, or manufactures and sells articles, in the community in which such school is located; provided, that nothing herein contained shall restrict any such school from doing work for or selling its own products or any other articles to any of its students or employees.

f) Real estate belonging to, actually and exclusively occupied, and used by, and personal property, including endowment funds, belonging to Young Men's Christian Associations, and other similar religious associations, orphan or other asylums, reformatories, hospitals and nunneries, which are not conducted for profit, but purely and completely as charities.

g) Buildings with the land they actually occupy, and the furniture and furnishings therein, belonging to any benevolent or charitable association and used exclusively for lodge purposes or meeting rooms by such association, together with such additional adjacent land as may be necessary for the convenient use of the buildings for such purposes; and

h) Property belonging to the Association for the Preservation of Virginia Antiquities, the Confederate Memorial Literary Society, and the Mount Vernon Ladies' Association of the Union.

No inheritance tax shall be charged, directly or indirectly, against any legacy or devise made according to law for the benefit of any institution or other body or any natural or corporate person whose property

is exempt from taxation as hereinbefore mentioned in this section. Nothing contained in this section shall be construed to exempt from taxation the property of any person, firm, association or corporation, who shall, expressly or impliedly, directly or indirectly, contract or promise to pay any sum of money or other benefit, on account of: Death, sickness, or accident to any of its members or any other person; and whenever any building or land, or part thereof, mentioned in this section and not belonging to the State, shall be leased or shall be a source of revenue or profit, all of such buildings and land shall be liable to taxation as other land and buildings in the same county, city, or town; and nothing herein, contained shall be construed as authorizing or requiring any county, city, or town to tax for county, city or town purposes, in violation of the rights of the lessees thereof existing under any lawful contract heretofore made, any real estate owned by such county, city or town, and heretofore leased by it. Obligations issued by counties, cities, or towns may be exempted by the authorities of such localities from local taxation.

Section 184. No debt shall be contracted by the State except to meet casual deficits in the revenue, to redeem a previous liability of the State, to suppress insurrection, repel invasion, or defend the State in time of wax. No scrip, certificate, or other evidence of state indebtedness, shall be issued except for the transfer or redemption of stock previously issued, or for such debts as are expressly authorized in this Constitution.

Section 185. Neither the credit of the Stale, nor of any county, city, or town, shall be, directly or indirectly, under any device or pretence whatsoever, granted to or in aid of any person, association, or corporation; nor shall the State, or any county, city, or town subscribe to or become interested in the stock or obligations of any company, association, or corporation, for the purpose of aiding in the construction or maintenance of its work; nor shall the State become a party to or become interested in any work of internal improvement, except public roads, or engaged in carrying on any such work; nor assume any indebtedness of any county, city, or town, nor lend its credit to the same; but this section shall not prevent a county, city or town from perfecting a subscription to the capital stock of a railroad company authorized by existing charter conditioned upon the affirmative vote of the voters and freeholders of such county, city or town in favor of such subscription: provided, that such vote be had prior to July first, nineteen hundred and three.

Section 186. All taxes, licenses, and other revenue of the State, shall be collected by its proper officers and paid into the state treasury. No money shall be paid out of the state treasury except in pursuance of appropriations made by law; and no such appropriation shall be made which is payable more than two years after the end of the session of the General Assembly, at which the law is enacted authorizing the same; and no appropriation shall be made for the payment of any debt or obligation created in the name of the State during the war between the Confederate States and the United States. Nor shall any county, city, or town pay any debt or obligation created by such county, city, or town in aid of said war.

Section 187. The General Assembly shall provide and maintain a sinking fund in accordance with the provisions of section Ten of the act, approved February the twentieth, eighteen hundred and ninety-two, entitled "an act to provide for the settlement of the public debt of Virginia not funded under the provisions of an act entitled an act to ascertain and declare Virginia's equitable share of the debt created before, and actually existing at the time of the partition of her territory and resources, and to provide for the issuance of bonds covering the same, and the regular and prompt payment of the interest thereon, approved February the fourteenth, eighteen hundred and eighty-two." Every law hereafter enacted by the General Assembly, creating a debt or authorizing a loan, shall provide for the creation and maintenance of a sinking fund for the payment or redemption of the same.

Section 188. No other or greater amount of tax or revenue shall, at any time, be levied than may be required for the necessary expenses of the government, or to pay the indebtedness of the State.

Section 189. On all lands and the improvements thereon, and on all tangible personal property, not exempt from taxation by the provisions of this article, the rate of state taxation shall be twenty cents on every hundred dollars of the assessed value thereof, the proceeds of which shall be applied to the expenses of the government and the indebtedness of the State, and a further tax of ten cents on every hundred dollars of the assessed value thereof, which shall be applied to the support of the public free schools of the State: provided, that after the first day of January, nineteen hundred and seven, the tax rate upon said real and personal property, for such purposes shall be prescribed, by law. But the General Assembly during such period of four years, in addition to making annually an appropriation for pensions not to exceed the last appropriation made for such purpose prior to September the thirtieth, nineteen hundred and one, may levy annually, a special tax for pensions, on such real and personal property of not exceeding five cents on the hundred dollars of the assessed value thereof.

ARTICLE XIV
MISCELLANEOUS PROVISIONS
HOMESTEAD AND OTHER EXEMPTIONS

Section 190. Every householder or head of a family shall be entitled, in addition to the articles now exempt from levy or distress for rent, to hold exempt from levy, seizure, garnishment, or sale under any execution, order, or other process issued on any demand for a debt hereafter contracted, his real and personal property; or either, including money and debts due him, to the value of not exceeding two thousand dollars, to be selected by him: provided, that such exemption shall not extend to any execution, order, or other process issued on any demand in the following cases:

- First. For the purchase price of said property, or any part thereof. If the property purchased, and not paid, for, be exchanged for, or converted into, other property by the debtor, such last-named property shall not be exempted from the payment of such unpaid purchase money under the provisions of this article;
- Second. For services rendered by a laboring person or mechanic;
- Third. For liabilities incurred, by any public officer, or officer of a court, or any fiduciary, or any attorney-at-law for money collected;
- Fourth. For a lawful claim for any taxes, levies, or assessments accruing after the first day of June, eighteen hundred and sixty-six;
- Fifth. For rent;
- Sixth. For the legal or taxable fees of any public officer or officer of a court.

Section 191. The said exemption shall not be claimed or held in a shifting stock of merchandise, or in any property, the conveyance of which by the homestead claimant has been set aside on the ground of fraud or want of consideration.

Section 192. The General Assembly shall prescribe the manner and the conditions on which a householder or head of a family shall set apart and hold for himself and family a homestead in any of the property hereinbefore mentioned. But this section shall not be construed as authorizing the General Assembly to defeat or impair the benefits intended to be conferred by the provisions of this article.

Section 193. Nothing contained in this article shall invalidate any homestead exemption heretofore claimed under the provisions of the former Constitution; or impair in any manner the right of any householder or head of a family existing at the time that this Constitution goes into effect, to select the exemption, or any part thereof, to which he was entitled under the former Constitution; provided that such right, if hereafter exercised, be not in conflict with the exemptions set forth, in sections One Hundred and Ninety and One Hundred and Ninety-one. But no person who has selected and received the full exemption allowed by the former Constitution shall be entitled to select an additional exemption

under this Constitution; and no person, who has selected and received part of the exemption allowed by the former Constitution shall be entitled to select an additional exemption beyond the difference between the value of such part and a total valuation of two thousand dollars. So far as necessary to accomplish the purposes of this section the provisions of chapter One Hundred and Seventy-eight of the Code of Virginia, and the acts amendatory thereof, shall remain in force until repealed by the General Assembly. The provisions of this article shall be liberally construed.

Section 194. The General Assembly is hereby prohibited from passing any law staying the collection of debts, commonly known as "stay laws"; but this section shall not be construed as prohibiting any legislation which the General Assembly may deem necessary to fully carry out the provisions of this article.

HEIRS OF PROPERTY

Section 195. The children of parents, one or both of whom were Slaves at and during the period of cohabitation, and who were recognized by the father as his children, and whose mother was recognized by such father as his wife, and was cohabited with as such, shall be as capable of inheriting any estate whereof such father may have died seised, or possessed, or to which he was entitled, as though they had been born in lawful wedlock.

ARTICLE XV

FUTURE CHANGES IN THE CONSTITUTION

Section 196. Any amendment or amendments to the Constitution may be proposed in the Senate or House of Delegates, and if the same shall be agreed to by a majority of the members elected to each of the two houses, such proposed amendment or amendments shall be entered on their journals, with the ayes and noes taken thereon, and referred to the General Assembly at its first regular session held after the next general election of members of the House of Delegates, and shall be published for three months previous to the time of such election. If, at such regular session the proposed amendment or amendments shall be agreed to by a majority of all the members elected to each house, then it shall be the duty of the General Assembly to submit such proposed amendment or amendments to the people, in such manner and at such times as it shall prescribe; and, if the people shall approve and ratify such amendment or amendments by a majority of the electors, qualified to vote for members of the General Assembly, voting thereon, such amendment or amendments shall become part of the Constitution.

Section, 197. At such time as the General Assembly may provide, a majority of the members elected to each house being recorded in the affirmative, the question, "shall there be a convention to revise the Constitution and amend the same?" shall be submitted to the electors qualified to vote for members of the General Assembly; and in case a majority of the electors so qualified, voting thereon, shall vote in favor of a convention for such purpose, the General Assembly, at its next session, shall provide for the election of delegates to such convention; and no convention for such purpose shall be otherwise called.

QUESTIONS AND ANSWERS UNDER SECTION 19
OF 1958 REGISTRATION LAW (ACT NO. 321)

NOTE: References to Code Sections are to the Annotated Code of Georgia and the Pocket Parts and Supplements thereto. Where no answer appears, it will vary according to the residence of the applicant for registration.

1. What is a republican form of government?
   Answer: A government in which the sovereign power resides in the people and is exercised by representatives elected by and responsible to the people. (Webster's Dictionary)

2. What are the names of the three branches of the United States government?
   Answer: Legislative, Executive and Judicial. (Articles I, II and III of the United States Constitution)

3. In what State Senatorial District do you live and what are the names of the county or counties in such District?

4. What is the name of the State Judicial Circuit in which you live and what are the names of the counties or county in such Circuit?

5. What is the definition of a felony in Georgia?
   Answer: An offense, for which the offender, on conviction, shall be liable to be punished by death or imprisonment in the penitentiary. (Code Section 26-101)

6. How many Representatives are there in the Georgia House of Representatives and how does the Constitution of Georgia provide that they be apportioned among the several counties?

Answer: 205. The eight counties having the largest population have three representatives each; the thirty counties having the next largest population have two representatives each; the remaining counties have one representative each. (Article III, Section III, Paragraph I of the Georgia Constitution. Code Section 2-1501)

7. What does the Constitution of Georgia prescribe as the qualifications of Representatives in the Georgia House of Representatives?

Answer: Must be a citizen of the United States, twenty-one (21) years of age, a citizen of Georgia for two years and a resident of the county from which elected for one year. (Article III, Section VI, Paragraph I of the Georgia Constitution. Code Section 2-1801)

8. How does the Constitution of the United States provide that it may be amended?

Answer: The Congress, whenever two-thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two-thirds of the several States, shall call a Convention for proposing Amendments, which, in either case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three-fourths of the several States, or by Conventions in three-fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress . (Article V of the United States Constitution. Code Section 1-501)

9. Who is the Chief Justice of the Supreme Court of Georgia and who is the Presiding Justice of that Court?

Answer: Chief Justice W. H. Duckworth. Presiding Justice Lee B. Wyatt.

10. Who may grant pardons and paroles in Georgia?

Answer: The State Board of Pardons and Paroles. (Article V, Section I, Paragraph XI of the Georgia Constitution. Code Section 2-3011)

11. Who is the Solicitor General of the State Judicial Circuit in which you live and who is the Judge of such Circuit? (If such Circuit has more than one Judge, name them all.)

12. If the Governor of Georgia dies, who exercises the executive power, and if both the Governor and the person who succeeds him die, who exercises the executive power?

Answer: Lieutenant Governor. Speaker of the House of Representatives. (Article V, Section I, Paragraph VII of the Georgia Constitution. Code Section 2-3007)

13. (a) What does the Constitution of the United States provide regarding the suspension of the privilege of the writ of Habeas Corpus?

(b) What does the Constitution of Georgia provide regarding the suspension of the writ of Habeas Corpus?

Answer: (a) It shall not be suspended, unless when in cases of rebellion or invasion, the public safety may require it. (Article I, Section IX of the United States Constitution. Code Section 1-127)

(b) It shall not be suspended. (Article I, Section I, Paragraph XI of the Georgia Constitution. Code Section 2-111)

14. What are the names of the persons who occupy the following State offices in Georgia?

(1) Governor

(2) Lieutenant Governor

(3) Secretary of State

(4) Attorney General

(5) Comptroller General

(6) State Treasurer

(7) Commissioner of Agriculture

(8) State School Superintendent

(9) Commissioner of Labor

Answer: (1) Marvin Griffin (2) Ernest Vandiver (3) Ben Fortson (4) Eugene Cook (5) Zack Cravey (6) George Hamilton (7) Phil Campbell (8) Claude Purcell (9) Ben Huiet.

15. How many Congressional Districts in Georgia are there and in which one do you live?

Answer: (First Part) Ten. (Code Section 34-2301)

16. What is the term of office of a United States Senator?

Answer: Six years. (Article I, Section III of the United States Constitution. Code Section 1-107)

17. What is the term of office of a State Senator?

Answer: Two years. (Article III, Section IV, Paragraph I of the Georgia Constitution. Code Section 2-1601)

18. What is the county site of your county?

19. How does the Constitution of Georgia provide that a county site may be changed?

Answer: By a two-thirds vote of the qualified voters of the county, voting at an election held for that purpose and by a majority vote of the General Assembly. (Article XI, Section I, Paragraph IX of the Georgia Constitution. Code Section 2-7809)

20. What are the qualifications for jury service in Georgia?

Answer: Must be on the books of the tax receiver and must be an upright and intelligent citizen. (Code Section 59-106)

21. What are the names of the persons who occupy the following offices in your county?

(1) Clerk of the Superior Court

(2) Ordinary

(3) Sheriff

22. How may a new state be admitted into the Union?

Answer: By Congress. (Article IV, Section III of the United States Constitution. (Code Section 1-405)

23. On what day and how often is the general election held in Georgia at which members of the General Assembly of Georgia are elected?

Answer: On Tuesday after the first Monday in November in the even-numbered years. (Article III, Section IV, Paragraph II of the Georgia Constitution. Code Section 2-1602)

24. What does the Constitution of the United States provide regarding the right of citizens to vote?

Answer: The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of race, color, previous condition of servitude or sex. (Fifteenth and Nineteenth Amendments to the United States Constitution. Code Sections 1-820 and 1-827)

25. In what Federal Court District do you live?

26. What are the names of the Federal District Judges of Georgia?

Answer: Frank A. Hooper, Boyd Sloan, T. Hoyt Davis, William A. Bootle, Frank M. Scarlett.

27. Who are citizens of Georgia?

Answer: All citizens of the United States, resident in Georgia. (Article I, Section I, Paragraph XXV of the Georgia Constitution. Code Section 2-125. Fourteenth Amendment to the United States Constitution. Code Section 1-815)

28. What is treason against the State of Georgia?

Answer: Levying war against her; adhering to her enemies; giving them aid and comfort. (Article I, Section II, Paragraph II of the Georgia Constitution. Code Section 2-202)

29. In what body does the Constitution of the United States declare that the legislative powers granted in such Constitution shall be vested?

Answer: Congress of the United States, which shall consist of a Senate and House of Representatives. (Article I, Section I of the United States Constitution. Code Section 1-101)

30. How many electoral votes does Georgia have in the electoral college?

Answer: Twelve. (Article II, Section I of the United States Constitution. Code Section 1-202)

Early Voting and Turnout

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Early or convenience voting—understood in this context to be relaxed administrative rules and procedures by which citizens can cast a ballot at a time and place other than the precinct on Election Day—is a popular candidate for election reformers. Typically, reformers argue that maximization of turnout is a primary goal, and reducing barriers between voters and the polls is an important method for achieving higher turnout. Arguments in favor of voting by mail, early in-person voting, and relaxed absentee requirements share this characteristic. While there are good theoretical reasons, drawn primarily from the rational choice tradition, to believe that early voting reforms should increase turnout, the empirical literature has found decidedly mixed results. While one prominent study suggests that voting by mail is associated with a 10% increase in turnout, other studies find smaller—but still statistically significant—increases in turnout associated with other convenience voting methods.

In this paper, we review terminology ("what is early voting?") and illustrate the breadth and popularity of these reforms; briefly review prior research on early voting, focusing on the political arguments being made in favor of reform and the social scientific findings of the impact of reform on turnout; and finally, add convenience voting reforms to an established model of turnout (Tolbert and Smith 2005; Tolbert, Grummel, and Smith 2001) in order to estimate their impact across the widest possible set of jurisdictions and over a 24-year period. In brief, our research indicates that *only one early voting reform—voting by mail—has a positive impact on turnout.* Most other reforms have a negligible, and at times negative, impact on turnout. These findings correspond with much of the literature, which shows that campaigns (primarily mobilization efforts) and individual political predispositions are the primary determinants of turnout. Institutional reforms have, at best, a small effect, and are unlikely to solve the challenge of low voter participation in the United States.

An Introduction to Early Voting

What is Early Voting?

For the purposes of this paper, *early voting* is a blanket term used to describe any system where voters can cast their ballot before the official Election Day. This covers a bewildering array of different electoral systems in the United States and, increasingly, abroad. Primarily, we will use the term to mean in-person early voting, no-excuse absentee balloting, and vote by mail (see Table 1 for a summary).

Some states allow *early in-person* (EIP) *voting*, whereby voters can cast early ballots just as they would do on Election Day, most commonly at the local elections office, but increasingly at satellite locations such as community centers, churches, or even grocery stores. The important distinction between EIP and other early voting systems is the requirement that individuals show up in person to cast a ballot. If we believe that getting to the polls imposes a significant barrier to participation, then in-person systems only partially relieve this burden; in addition, the convenience factor varies between systems, depending upon where voters can cast ballots (the elections office vs. the grocery store, for example).

No-excuse absentee voting allows voters to request an absentee ballot without providing any excuse, such as travel or hospitalization; in some states, notably California, a voter can also request "permanent" absentee status, essentially becoming a vote-by-mail voter. Thus, we do not discuss absentee balloting as we have traditionally understood it: casting your ballot before Election Day because you are infirm, out of the country (in the military or living overseas), away at college, or otherwise unable to make it to the polls. This form of absentee balloting has historically been quite restrictive, and the proportion of ballots cast via this method very low. No-excuse absentee balloting, in contrast, has skyrocketed in many states and localities.

Finally, *vote-by-mail* (VBM) is a system in which all voters receive and cast their ballots via regular mail. It has been used by Oregon for all elections since 1998 (the first election conducted in this manner was a 1996 special election); the United Kingdom uses VBM for local elections; VBM has been used in some local elections in California, and two counties in the state are VBM counties. Under VBM in Oregon, the voter receives a voter's guide approximately three weeks before Election Day, followed by the ballot, generally mailed 18 days before the election. The voter may return the ballot any time after it is received, usually 15 days or closer to Election Day. Voters may also return their ballots in person *on Election Day*, thereby rendering many "VBM" voters de facto Election-Day voters.

Where are the Reforms Occurring and are Voters Responding?

The first voting reforms aimed at increasing voter convenience took place in the 1980s,

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Table 1
Early Voting Systems

Early Voting System	AKA	Mechanics	Where Used
Vote-by-Mail (VBM)	"Postal Voting"	Voters receive a ballot in the mail, approximately two weeks before the election. Ballots can be returned via mail or dropped off at satellite locations.	Oregon, United Kingdom (local elections), New Zealand
Early In-person Voting (EIP)	In-person absentee balloting	Voters have the option of casting a vote early at a satellite location or at the county elections office. In most localities, the voter simply shows up; no prior notification is required.	Rapidly expanding list; Texas for the longest, Georgia, Tennessee, Iowa. Many states adopted after 2000.
No-excuse Absentee	"Vote by mail", "absentee voting by mail"	Voters have to apply for an absentee ballot, but no excuse is required. Voters receive the ballot as early as 45 days before the election and must return by the date of the election. In some localities, only a ballot postmarked on or before the election counts as valid.	As of 2006, 24 states. Five states also allow "permanent" absentee status (de facto vote-by-mail).

Notes: In an increasing number of localities, absentee balloting can be done in person (and is often referred to as early voting) or via mail (sometimes referred to as "vote by mail"). Many localities are not distinguishing between the two when reporting absentee ballot figures. In Sweden, "postal voting" is used to describe in-person voting at the post office.

when familiar forms of exclusive voting (absentee and EIP) were opened to the wider electorate. Rather than being simply the "safety-net" for voters who were sick, elderly, disabled, college students, or travelers, as it was originally intended and developed, early voting became a method aimed at easing the burden of going to the polls on Election Day. Now, instead of requiring absentee voters to provide a "reasonable excuse" for requesting a non-precinct ballot in advance of the election, states would allow anyone to do so. Similarly, many states allowed voters to cast a ballot at the county clerk's or elections office before Election Day if they were going to be out of town or needed assistance; in the 1980s, Texas began allowing anyone to cast a ballot this way.

As shown in Table 2, by the late 1990s, 20 states had at least one type of convenience voting on the books, and some had two: Kansas and Washington allowed voters to apply for "permanent absentee" status, which operates exactly like VBM (ballots are automatically sent to voters for each election); six states allowed both no-excuse absentee voting and EIP (or absentee) voting. In 1995, Oregon had its first election under the VBM system, and has conducted all subsequent elections in the same way since 1999.

The 2000 presidential election's myriad scandals and debacles (mainly technological and clerical in nature) gave birth to a national movement toward overhauling the electoral system. In the wake of the election, many states expanded their election systems to include convenience options—some states even adopted additional early voting options (e.g., Florida, which added no-excuse absentee voting to EIP). The Help America Vote Act (HAVA, 2002) also spurred the growth of early voting. The administrative and technological benefits of early voting systems became particularly important in the period following 2000: a test-run of new voting machines, relief of Election-Day crowds, lower staffing costs, and extra hands-on training opportunities for poll workers appeal to voters and election officials alike.

Generally, the non-precinct voting reforms administered over the last 25 years have taken place outside the Northeast. The West Coast and Southwest, in particular, began instituting postal methods early (VBM, no-excuse absentee), and Texas has become the most prominent EIP state, with eight other states following Texas's lead. This trend is quite clear in the rates of early voting in the 2004 general election (see Figure 1).

While not uniformly the case, high numbers of early voters primarily appear in states with a high percentage of rural population and in those that are geographically large. The 15 states with the highest early voting rates in 2004 all fit these descriptions (see Table 3). This fits a pattern found in other analyses of individual early voting rates—individual voters who face long commutes or who live in rural areas were more likely to cast their ballot early (Gronke 2004).[1]

It also appears that those states that adopted non-precinct voting systems early on also have the highest current rates of early voters. Eleven of the "Top 15" early voting states in 2004 had instituted some type of liberalized early voting by the 1990s. Only eight of the remaining 25 had liberalized by that point (compare Tables 2 and 3). What is overwhelmingly apparent from Figure 1 and Table 3 is the rapid increase in early voting once states adopt these reforms. A significant proportion of voters clearly prefer voting at locations other than the precinct place, and on days other than Election Day. In some states, this proportion peaks at 30–40% of the electorate, but in other states there seems no upper bound. For example, 85% of Washington voters cast their ballots absentee in 2006, and Washington State is likely to move to fully VBM by the 2008 election.

Convenience Voting Reforms and Turnout: The State of the Literature

Election officials are strong advocates of early voting reforms. Oregon Secretary of State Bill Bradbury argues that voting by mail increases turnout and results in more citizens having a stake in their government; results in more thoughtful voting, enhancing the democratic process; offers greater procedural integrity; and finally, saves taxpayer dollars. Similar arguments have been made in favor of EIP and relaxed absentee voting.

Table 2
The Advance of Non-Precinct Voting Methods

1980s	Traditional Absentee Vofing	47 States as of January 1980
	No Excuse Absentee	CA, OR, WA
	No Excuse Absentee and Permanent Absentee Status	(none)
	Early In Person Voting	TX
	No Excuse Absentee and Early In Person Voting	(none)
1990s	Traditional Absentee Voting	45 States as of January 1990
	No Excuse Absentee	AK, CA, IA, ND, VT, WA, WY
	No Excuse Absentee and Permanent Absentee Status	KS*, WA
	Early In Person Voting	FL, NV, TN, TX
	No Excuse Absentee and Early In Person Voting	AZ, CO, HI, ID, NM, OK
	Voting by Mail	OR**
2000–2006	Traditional Absentee Voting	27 states as of January 2000
	No Excuse Absentee	AK, CA, IN, IA, ME, MD, MT, NE, ND, VT
	No Excuse Absentee and Permanent Absentee Status	CA, KS, MT, NJ. WA
	Early In Person Voting	FL, IL, LA, ME, NV, TN, TX, WV
	No Excuse Absentee and Early In Person Voting	AK, AZ, AR, CO, FL, GA, HI, ID, IA, NE, NM, NC, OH, OK, SD, UT, VT, WI, WY
	Voting by Mail	OR

Notes: Figures collected by the authors. Numbers may be more than 50 in each decade because states reformed their election laws and may have a value in two cells. As noted in the text, the definition of "in person early voting" conflicts across states.

*Kansas instituted an early voting period in 1998, during which voters could vote absentee "in person." At this time, they also instituted permanent absentee balloting.
**Oregon voters approved a November 1998 initiative adopting voting by mail for all elections, The state experimented with voting by mail in three elections in late 1995 and early 1996.

Figure 1
2004 Early Voting Rates

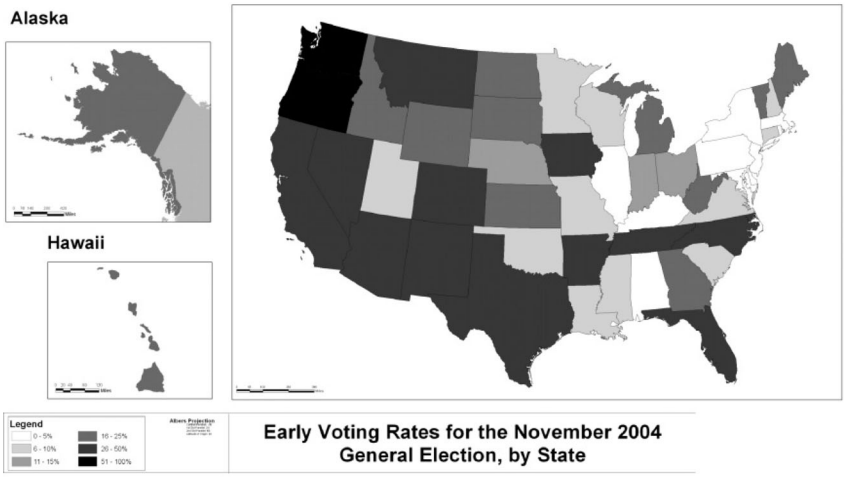


Table 3
Changing Rates of Early Voting in the Top 15 Early Voting States

State	2004 Percent EV	2006 Percent EV	Change, 2004–2006
Oregon	84.00%	72.00%	–12.00%
Washington	68.48%	88.47%	19.99%
Nevada	52.28%	51.63%	–0.65%
New Mexico	50.61%	40.22%	–10.39%
Tennessee	47.30%	47.35%	0.06%
Colorado	47.13%	54.38%	7.25%
Arizona	40.77%	46.73%	5.96%
Arkansas	36.92%	22.66%	–14.26%
California	32.61%	41.54%	8.94%
Texas	32.56%	24.43%	–8.13%
Montana	32.39%	31.63%	–0.76%
North Carolina	31.63%	19.96%	–11.67%
Florida	30.10%	16.30%	–13.80%
Iowa	30.10%	21.95%	–8.15%
South Dakota	23.96%	27.35%	14.13%

Notes: The list of top 15 states were selected as of the 2004 election. Early voting figures were assembled from state website and the 2006 Election Day Survey released by the Election Assistance Commission.

The two primary national organizations that deal with election administration, the National Conference of State Legislatures (NCSL) and the National Association of Secretaries of State (NASS), both issued reports after the 2000 elections, and again after the passage of HAVA that urge states to consider reforms that would allow early voting (NCSL 2001; NASS 2003; 2001; Bradbury 2001). Many reformers hope that early voting may help reengage Americans in the electoral process (ACE Project 2004; Nagourney 2002; Magleby 1987).

The empirical evidence to date supports election officials in their claims of procedural integrity. EIP, absentee balloting, and VBM all do result in a more accurate count (Alvarez and Hall 2003; Hanmer and Traugott 2004; Traugott 2003). The verdict on cost-savings is less clear. Oregon estimates that it saved nearly 17% of the costs of holding elections by adopting VBM, while EIP and liberalized absentee balloting do not clearly result in a cost saving (reported in Hansen 2001). However, improved procedural integrity and flat or slightly positive cost savings have led to widespread recommendations in favor of all varieties of early voting (particularly in response to HAVA requirements). Simultaneously, the use of postal voting is expanding worldwide (Hall 2003; Wintour and Carter 2002; Institute for Democracy and Electoral Assistance, "Postal Voting and Voting on the Internet"). There seems little question, then, that "Election Day in the United States is rapidly turning into an anachronism: waiting in line to cast our ballots will become the quaint notion of a bygone era" (Gronke 2004). Early voting and extended election periods are here to stay.

The empirical evidence on turnout is also positive, but less so. Early voting should increase turnout, theoretically, by easing the resource demands of voting, primarily by eliminating the need to go to the polling booth or by providing more convenient times to vote (McDonald and Popkin 2001; Rosenstone and Hansen 1993; Texiera 1992; Wolfinger and Rosenstone 1980). The empirical evidence supports this expectation. Liberalized absentee balloting leads to a small but significant growth in turnout (Oliver 1996; Dubin and Kalsow 1996). EIP also stimulates participation, again only slightly (Neeley and Richardson 2001; Stein 1998; Stein and Garcia-Monet 1997). Finally, VBM increases turnout (Berinsky, Burns, and Traugott 2001; Karp and Banducci 2000), perhaps by as much as 10% (Southwell and Burchett 2000a).[2] Initial boosts in turnout, however, may be due in part to a novelty effect, which fades over time.

Citizen support of early voting has been high as well. We know, for example, that Oregonians love VBM. They report a very high level of satisfaction with the system and claim that it makes them more likely to vote (Southwell 2004; 1998; 1996). In Texas, roughly one-third to one-quarter of ballots are cast early. In California in 1978, 4.41% of votes were absentee; by 2006, 40% cast absentee ballots. In Washington State, more than 85% of ballots were absentee in 2006, rising to 100% in some counties (essentially stealth VBM). Nationwide, the CalTech/MIT Voting Technology Project (2001) reported that non-precinct voting rates exceed 15% in more than 12 states in 2000, and the Early Voting Information Center estimated an early voting rate of 21% in 2004 and 2006.

The performance of electoral reforms on changing *who votes*, however, is decidedly mixed. Berinsky (2004, 1) writes: "[w]hat has not been widely recognized is that this wave of reforms has exacerbated the socioeconomic biases of the electorate." Berinsky's claim is sustained in compositional studies of all three systems: EIP (Stein 1998), liberalized absentee balloting (Patterson and Caldeira 1985; Oliver 1996) and VBM (Karp and Banducci 2000; Berinsky, Burns, and Traugott 2001; Southwell and Burchett 2000b).

These systems are more commonly taken advantage of by politically active segments of the population. VBM increases turnout more by retaining likely voters in less-intense campaigns (e.g., midterm and local elections) than by recruiting new voters into the system (Berinsky, Burns, and Traugott 2001; Southwell and Burchett 2000b; Southwell 1998). The two studies of absentee balloting indicate that rates of absentee voting vary positively with levels of partisan mobilization: candidates harvest absentee voters in localities where party organizations are strong, and Republican candidates are more likely to harvest absentee voters (Patterson and Caldeira 1985; Oliver 1996). Stein's (1998) study of EIP in Harris County, Texas, showed that that there were significantly larger numbers of Democrats and strong partisans among the "early voters" than among the Election-Day voters.

These past studies, while helpful, are hampered by limitations in research design and methodology that limit their applicability to the past decade of reforms. Most importantly for our purposes here, many of these studies are ancient history from the perspective of early voting. Karp and Banducci (2000) and Southwell and Burchett's (2000b) studies considered only the first three VBM contests. Magleby's (1987) pioneering work looked just at municipal elections in three Western states in the early 1980s. Stein's (1998) study of EIP voting is based on a single election (1994) in a state where rates of early voting have increased dramatically in the past decade, and his results are contradicted by a more recent study (Neeley and Richardson 2001). Neeley and Richardson's study is itself based in just one county in 1996, and relies on self-reports of turnout. Finally, the two studies of absentee balloting (Patterson and Caldeira 1985; Oliver 1996) rely on absentee ballot rates that are less than half what they are today.

Early Voting and Turnout, 1980–2004

In this final section, we evaluate the impact of early voting reforms on turnout over a 24-year period. We wanted to see if we found effects of a similar magnitude across a wide variety of electoral and campaign contexts, over time, and across different kinds of voting reforms. We drew upon an established model of

turnout from Tolbert and Smith (Tolbert, Grummel, and Smith 2001; Tolbert and Smith 2005). In these papers, the authors argue that ballot initiatives, far from making the election too complicated and thereby discouraging turnout, do the opposite: they *increase* turnout, primarily by increasing the salience of the election.

Here, we are less interested in replicating their findings for the effects of initiatives as we are in seeing whether early voting reforms similarly increase turnout—not by educating the electorate, but by lowering at least one barrier to ballot access. We are fortunate to be able to use this dataset because it contains a rich set of other correlates of turnout, including region, election type, institutional provisions, and demographic characteristics of the state (racial diversity and per capita income).[3] To this dataset we added a measure of early voting reforms, collected from archival sources. We coded reforms into six categories: "traditional" absentee balloting; "no-excuse" absentee balloting; no-excuse absentee balloting with permanent absentee status; EIP voting; no-excuse absentee plus EIP voting; and VBM. These six categories were then collapsed into dummy variables, with traditional absentee balloting as the excluded category, and added to the turnout model. As a reminder, Table 1 provides a guide to which states fall into these categories.

Our replication and extension results are presented in Table 4. We report on a model of turnout in presidential years (column 1) and midterm years (column 2). We will focus our discussion here on the impact of voting reforms on turnout.[4]

We find little evidence that early voting reforms increase turnout, except for VBM in Oregon, and then only in presidential elections. As shown in Table 4, column 1, VBM is associated with a 4.7% increase in turnout in presidential years, *ceteris paribus*. This is less than half of the increase reported by Southwell and Burchett (2000a).[5] Two of the other voting reforms show a positive impact on turnout (no excuse absentee balloting and no-excuse absentee balloting plus permanent absentee status), while two *depress* turnout (EIP voting and no-excuse absentee balloting plus no-excuse EIP voting). However, none of these effects are statistically significant.

In midterm elections, none of the reforms has a statistically significant impact on turnout, although the size of the coefficient on VBM changes only slightly. All of the other coefficients remain well below conventional statistical significance levels and the size of the estimated effect is either quite small or shifts from model to model.

We want to highlight, however, the relatively large, negative, and stable coefficient associated with EIP voting in both models, albeit in both cases with large standard errors.[6] Visual inspection of those states with only EIP voting provides some evidence as to why this effect may persist. The five states with EIP voting in 2004 were Arkansas, Nevada, Tennessee, Texas, and West Virginia.[7] Since 1998, these five states have an average turnout of 44%, while all other states have an average turnout of 51%. Perhaps these five states have some characteristics that are not contained in our model and which lead them to both limit their convenience voting reforms to EIP voting (there are few states that allow early voting but which still require a reason for an absentee ballot) and which also lead them to have lower than average turnout.

Table 4
Turnout Effects of Early Voting Reforms

	Presidential Elections	Midterm Elections
South	−4.511	−7.085
	*(1.287)***	*(1.302)***
Senate	0.638	1.696
	(.564)	*(.547)***
Governor	−0.524	3.102
	−0.521	*(.575)***
Percent HS Graduates	0.053	0.134
	(0.140)	*(.111)*
Racial Diversity	−10.577	−4.944
	*(3.072)***	*(2.404)**
Per Capita Income (1997)	0.000	−0.000
	(0.000)	*(.000)*
Closing date for registration	−0.178	−0.161
	*(0.026)***	*(.027)***
No Excuse Absentee	0.404	1.807
	(.992)	*(1.342)*
No Excuse + Permanent Status	1.737	−0.588
	(1.17)	*(1.376)*
Early In-Person Voting	−2.167	−2.514
	(1.632)	*(1.928)*
No Excuse + In-Person	−0.141	−0.149
	(1.665)	*(.986)*
Voting by mail	4.719	4.406
	*(2.176)**	*(3.857)*
Constant	55.291	40.993
	*(10.075)***	*(8.415)***
R-squared	0.489	0.477
Observations	349	296
Number of States	50	50

Notes: Dataset made available by Tolbert and Smith, with additional variables coded by the authors. All estimates are OLS with panel-corrected standard errors. Standard errors are in parentheses. *significant at 5%; **significant at 1%.

Conclusions

Our goals in this paper were threefold. First, we described the lay of the land with respect to early voting reforms, defining the institutional changes, illustrating their geographic dispersion, and reporting the growing number of early voters. Early voting reforms are rapidly expanding nationwide, and will likely be available in virtually every state in 2008. The number of early voters continues to increase rapidly in each election, and in some states shows no signs of abating. It is no longer a question of whether early voting is a smart reform; the question now is what sort of early voting to allow and how to adjust to its impact.

Second, we reviewed the extant political science literature with respect to early voting. Previous scholarly work found a positive impact of early voting reforms on turnout, varying from small (3%) in the case of absentee balloting, to over 10% in the case of VBM. We pointed out, however, that many of these studies looked at a relatively limited historical period, when relaxed balloting requirements were only starting to be introduced and were a novelty.

Finally, we estimated a comprehensive model of early voting and turnout from 1980–2004. We built upon an extant model of turnout, adding to it a series of variables representing early voting innovations. In this analysis, we did find a positive impact of early voting reforms on turnout, but only in the one state that first initiated VBM in 1995 and fully adopted it after 1998, and in that case, only in presidential years. The boost in turnout is smaller than reported in previous work but still significant.

We are not particularly surprised at these modest results. These findings support much of the literature that has found, at best, a modest impact of voting reforms on turnout. Our results

are also consistent with theoretical presentations of the paradox of turnout. John Aldrich (1993), in his summary of the rational choice literature on turnout, describes voting as a decision made at the margin, and thus responsive to relatively small changes in costs or benefits. We view early voting as a minor change in the costs of voting, making it more convenient to be sure, but paling in significance to such effects as feelings of citizen empowerment, interest in and concern about the election, and political mobilization by parties, candidates, and other political organizations (Stein, Owens, and Leighley 2003; Rosenstone and Hansen 1993).

In conclusion, we remain skeptical of those who advocate in favor of early voting reforms primarily on the basis of increased turnout. Both these results, and prior work in political science, simply do not support these claims. There may be good reasons to adopt early voting—more accurate ballot counting, reduced administrative costs and headaches, and increased voter satisfaction—but boosting turnout is not one of them.

Notes

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1. As an aside, at the time of this writing, two months after the 2006 elections, we are unable to obtain early voting statistics for more than half of the top 15 states. Many states report to us that they are compiling this information for the Election Assistance Commission's 2006 Election-Day survey, scheduled to be completed by March 2007.

2. Magleby (1987) estimates a 19% increase using VBM, based on a study of local elections in California, Oregon, and Washington. This figure is dramatically higher than that obtained in other studies. However, all studies find a pattern of increasing turnout effects in lower profile contest, so it may be that this figure is accurate.

3. We do not describe or justify the inclusion of these variables here. Interested readers should go to Tolbert and Smith (2005) for this information. We thank Tolbert, Grummel, and Smith for allowing us access to their data.

4. These results match in broad brush strokes the results reported by Tolbert and Smith (2005), although we are using one additional election cycle in the data. We were able to replicate Tolbert and Smith's result sexactly when limiting ourselves to 1980–2002 and using their turnout model.

5. Southwell and Burchett only examined turnout in the first three VBM elections, two of which were special elections to replace Senator Robert Packwood, who retired under a cloud of ethics charges. The third was a presidential preference primary. Each of these elections showed higher than normal turnout.

6. The p-value on the EIP voting coefficient is .184 in the presidential year model and .192 in the midterm model.

7. As shown in Table 2, Florida, Illinois, Louisiana, and Maine added EIP voting after the 2004 election.

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Election Laws, Mobilization, and Turnout: The Unanticipated Consequences of Election Reform

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State governments have experimented with a variety of election laws to make voting more convenient and increase turnout. The impacts of these reforms vary in surprising ways, providing insight into the mechanisms by which states can encourage or reduce turnout. Our theory focuses on mobilization and distinguishes between the direct and indirect effects of election laws. We conduct both aggregate and individual-level statistical analyses of voter turnout in the 2004 and 2008 presidential elections. The results show that Election Day registration has a consistently positive effect on turnout, whereas the most popular reform—early voting—is actually associated with lower turnout when it is implemented by itself. We propose that early voting has created negative unanticipated consequences by reducing the civic significance of elections for individuals and altering the incentives for political campaigns to invest in mobilization.

Advocates, journalists, and politicians frequently propose changes to election laws out of the belief that making voting easier will increase voter turnout. It seems logical that making voting more convenient—through relaxed registration rules, registration on Election Day, voting prior to Election Day, or expanded absentee voting—will encourage more people to cast ballots. We challenge this notion and show that the most popular reform—early voting—actually *decreases* turnout when implemented by itself, an unanticipated consequence that has significant implications for policy and for theories of how state governments can influence turnout.

This result is counterintuitive, and it certainly runs against the grain of conventional wisdom. Our explanation involves rethinking the calculus of voting to focus on the *net* consequences of election laws, that is, the sum of both direct and indirect effects. Direct effects stem from the costs imposed by the state and include registration requirements, polling locations and hours, and rules such as identification requirements. Yet an exclusive focus on direct effects leads to a misunderstanding of how election laws indirectly affect mobilization by nongovernmental actors such as the media, campaigns, interest groups, friends, and family. These actors indirectly raise or lower the costs of voting depending on how much information they provide and the social incentives for voting they generate. The added convenience of early voting decreases the direct costs of voting, but this effect is more than offset by

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a reduction in mobilization efforts, resulting in lower net turnout.

Our study begins by analyzing prior research on state election laws, turnout, and mobilization. We then offer a theory of voter turnout that illuminates how combinations of Election Day registration (EDR), same-day registration (SDR), and early voting shape voting costs directly and indirectly through nongovernmental actors. Empirically, we address possible interactions by classifying all of the potential permutations and estimating separate effects for each. Our key models analyze cross-sectional individual and aggregate data from the 2004 and 2008 presidential elections. The results demonstrate that, on their own, EDR increases turnout, and early voting decreases it. Combining the two offsets the negative effect of early voting. We conclude by discussing the broader implications of the findings for future research on election reform and mobilization.

Previous Research

Reforming the voting process to increase turnout has been a long-standing goal in both the academic and policymaking communities.[1] Until recently, these efforts focused on reducing the costs of voting by making registration easier and voting more convenient. The most commonly proposed reforms have been EDR, SDR, and especially early voting.[2] Here we provide working definitions for each term and set out what is known from existing research.

Election Day registration permits eligible voters to both register and vote on Election Day. This should increase turnout by eliminating the need for two separate actions: registering in advance and then casting a ballot at a later date. Thirty years ago, Wolfinger and Rosenstone noted, "[r]egistration is usually more difficult than voting, often involving more obscure information and a longer journey at a less convenient time, to complete a more complicated procedure. Moreover, it must usually be done before interest in the campaign has reached its peak" (1980, 61). EDR lowers the cost of voting by combining the separate steps of registering and voting into "one essentially continuous act" (Wolfinger, Highton, and Mullin 2005, 3) and permits voters to register at the last moment when interest is highest.[3] It thus circumvents the registration closing date that would otherwise disenfranchise recent movers and others who fail to register in advance (Hershey 2009; Highton 2004; Squire, Wolfinger, and Glass 1987; Timpone 1998).

A consistent line of research has confirmed that EDR increases turnout. Estimates of the overall turnout effects of EDR range from three to seven percentage points in presidential elections (Brians and Grofman 2001; Fenster 1994; Hanmer 2009; Knack 2001; Neiheisel and Burden 2012; Rigby and Springer 2011). Highton summarizes the impact of EDR on voter turnout as "about five percentage points" (2004, 509).

Early voting, as we define it, constitutes practices that permit voters to cast ballots without excuse prior to Election Day. Early voting has more than quadrupled since the early 1990s, increasing from 7% of all votes in 1992 to over 30% in 2012. Now more than half of the states allow early voting in some form. The popularity of early voting and decrease in the importance of the traditional Election Day has led observers of election practices to conclude that the "United States is in the midst of a revolution in voting" (Fortier 2006, 1).

Although early voting policies take different forms, they all eliminate the need for the voter to appear at a polling place on Election Day. These practices include no-excuse absentee voting, voting by mail, and in-person early voting (Fortier 2006; Gronke et al. 2008). There is additional variation in where people vote: in-person early voting may take place either at central election offices or at dispersed voting centers in locations such as shopping malls or libraries. In some states, voters must provide a justification before receiving absentee ballots, with wide variation in the stringency of the justifications. We code states with "no excuse" absentee voting or permanent absentee voting (which allows voters to request absentee ballots for all elections, and the ballot is automatically sent) as early voting states.

Research on the turnout effects of early voting has produced mixed results. Gronke, Galanes-Rosenbaum, and Miller (2007), for example, concluded that early voting had no effect on turnout in national elections between 1980 and 2004. Aside from the special case of exclusive voting by mail, none of the early or absentee voting laws they studied boosted turnout in either presidential or midterm elections.[4] Other studies also

[1] Lijphart (1997) also suggested proportional representation, and even compulsory voting, as mechanisms for raising turnout.

[2] Voter identification laws are also making their ways across the states, although their goal is generally not increasing voter participation. The analysis below provides more insights on how voter ID might affect turnout.

[3] The EDR reform spread in several waves. See Hanmer's (2009) comprehensive analysis of EDR for a review of the history and reasons for adoption.

[4] Previous research also shows a positive effect of vote-by-mail (Karp and Banducci 2001; Magleby 1987; Southwell and Burchett

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found little relationship between early voting and turnout (Fitzgerald 2005; Gronke et al. 2008; Oliver 1996; Primo, Jacobsmeier, and Milyo 2007; cf. Wolfinger, Highton, and Mullin 2005).[5]

Finally, we consider **same-day registration**, which we define as a practice that permits people to both register and vote in a single act prior to Election Day. SDR is essentially the marriage of EDR and early voting. It thus reduces the potential inconvenience of having to vote on a specific election day, eliminates the registration closing date, and permits "one-stop shopping." Despite its widespread use, we know of no studies that have analyzed SDR's direct effects on turnout. As we will show, including SDR in turnout models alters the inferences drawn about the effects of early voting.

Election Laws as Turnout Mechanisms

We theorize that the costs of voting come in two types. They can be imposed *directly* through the legal framework of the voting process itself, which is controlled by the state. But an exclusive focus on these direct effects misses the importance of the *indirect* effects of laws as they are mediated through the mobilization efforts that occur outside of the state's purview (Oliver 1996; Rosenstone and Hansen 1993). It is relatively easy to envision how changes in election laws will shape direct legal burdens on voters, but it is harder to predict how changes may indirectly affect how nonstate actors alter their own mobilization efforts. The total net cost of voting includes both legal hurdles and the degree of underwriting provided by extragovernmental actors.

Theory suggests that election laws should have the largest impact on voters who are on the turnout bubble, that is, neither highly likely to vote nor to abstain (Highton 2004). Citizens who are almost certain to cast a ballot will not be affected by marginal changes in the rules; they will vote regardless. Similarly, low-likelihood voters may simply be beyond the reach of any voting reforms. For people near the voting threshold, it is axiomatic that small changes have the highest likelihood of turning nonvoters into voters, or vice versa (Hanmer 2009). Although this point may be obvious, the implications are less so. Through this lens, we can distinguish between voting reforms that bring in new voters and therefore increase turnout from those reforms that simply provide alternative opportunities for voters who would cast a ballot under almost any set of rules.

To use Berinsky's (2005) classification, reforms can either *stimulate* new voters or *retain* existing voters. Stimulation is usually thought to happen via the strategic mobilization efforts of campaigns that engage in a media blitz as Election Day approaches. But our theoretical view conceives of mobilization as more than the efforts of campaign or party elites whose primary interest is in winning elections. Stimulation also arises nonstrategically from many informal sources: the local media that cover elections; intentional or unintentional recruitment by family, acquaintances, and coworkers who are discussing the election; and the sheer visibility of polling places and other Election Day activities. This approach broadens the standard definition of electoral mobilization to include informal recruitment (Verba, Schlozman, and Brady 1995), inadvertent reductions in information costs, and social incentives for voting.

Some scholars have speculated that a loss of the "civic day of election" could lower turnout (Fortier 2006; Thompson 2004). Traditional Election Day is a social event as well as a political one. For at least some voters, what gets them to the polls is the stimulation of the day's news, observation of activities at polling places, and conversations with friends and neighbors. Local news coverage, discussions with peers, and Election Day activities all help spur turnout by providing information about candidates and the process of voting, introducing some normative pressure to vote, and enhancing the social benefits of taking part in a collective enterprise. When these activities are diluted, or at least redistributed over time, so is the stimulating effect, particularly for the peripheral voter.

Early voting provides convenience to regular voters, particularly those already registered, and thus is better at retention than stimulation. It turns a large-scale social activity that once took place on a single election day into a weeks-long process that diffuses public visibility. EDR overcomes the screening effects of the closing date of registration and stimulates new voters by concentrating energy on a single election day. Crucially, it does so without robbing Election Day of its stimulating effects, and it most likely *increases* the impact of Election Day stimulation. This is supported by research suggesting that the face-to-face interactions that mark Election Day voting create social capital and draw potential

2000), but these studies have largely been confined to Oregon and Washington. Kousser and Mullin (2007) estimate that a shift to vote-by-mail in California would result in a 3-point drop in turnout. We do not study vote-by-mail directly but account for it by including dummy variables for Oregon and Washington.

[5] Giammo and Brox (2010) find a short-term positive effect followed by a long-term negative effect. Others find negative effects only in particular model specifications (Leighley and Nagler 2009).

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voters to the polls (Arceneaux, Kousser, and Mullin 2012; Fortier 2006; Funk 2010; Kropf, Swindell, and Wemlinger 2009; Thompson 2004). Field experiments demonstrate that turnout is increased by the presence of community festivals (Addonizio, Green, and Glaser 2007) and when voting habits may be publicized to neighbors (Gerber, Green, and Larimer 2008; Panagopoulos 2010). Arceneaux, Kousser, and Mullin (2012) find that traditional get-out-the-vote (GOTV) efforts have a larger turnout effect for those who vote at their polling place on Election Day rather than through the less socially visible process of voting by mail. Rolfe's (2012) emphasis on the social rather than individual roots of voter turnout helps us understand these experimental effects. For Rolfe, voting is primarily a social act in which a person's decision to vote is conditional on the turnout of others. People embedded in broader social networks with more mobilizing agents are thus more likely to be prodded to vote (see also Bond et al. 2012). Coupled with our argument about the free information that Election Day provides, all of this recent research is compatible with our theory about the importance of concentrating activity on a single election day.

By offering more days on which to vote, early voting lowers the direct costs of voting, but mostly as a convenience for those who were already planning to vote. Registration statistics confirm this effect: in the states that had early voting and SDR in 2008, 3.6 million same-day registration applications were filed; of those, only 963,144 (or about 27%) were new voters added to the registration rolls for the first time.[6] Early voting almost certainly brings out some new voters who would have difficulty making it to the polls on Election Day (the direct effect), but it more than offsets this increase by dissipating the energy of Election Day over a longer period of time and reducing mobilization (the indirect effect).

Precisely how does this occur? Political campaigns strategically consider the political environment as they choose to invest resources to mobilize voters. Partisan contacts, direct mail, phone calls, leafleting, and mass media (Green and Gerber 2008), levels of competition and campaign spending (Jackson 1997, 2002), campaign advertising (Freedman, Franz, and Goldstein 2004),[7] campaign yard signs (Panagopoulos 2009), texts (Strauss and Dale 2009), party transfers to states, and campaign visits by presidential candidates (Holbrook and McClurg 2005) all have an impact on turnout. Campaigns may draw down their mobilization efforts when they have already brought in large numbers of early voters; there may be less advertising or fewer efforts to organize Election Day activities. When much of the eligible population has already voted in advance of Election Day, there is less payoff for continued get-out-the-vote activities. If this reduced activity in high early-voting states is not counterbalanced by the increased convenience of voting prior to the election, the net effect will be negative. To the degree that using mass media to contact potential voters is inefficient (Krasno and Green 2008), it becomes even more so when many likely voters have already cast their ballots. Evidence from television advertising data shows that campaign stimulation responds precisely in the ways our argument suggests (see Figure A1 in the supplemental information). The volume of ads is lower in states with early voting, and the ramp-up of ads before Election Day is also less steep in these states.

Rather than building up to a frenzied Election Day in which media coverage and interpersonal conversations revolve around politics, early voting makes voting a more private and less intense process. Social pressure is less evident, guidance on how and where to vote is less handy, and the prospect of positive social interactions at the polls is decreased. These reductions in stimulation—both strategic and nonstrategic mobilization—are greater than the modest positive benefits of additional convenience that accrue largely to those who would vote in any case. Early voting thus stands in stark contrast to EDR, which eliminates the need to register before the campaign reaches maximum intensity and keeps the focus of social and political activity on a single day. Election Day is abuzz with discussion, media coverage, and last-minute contacts from parties and candidates, factors that can exert a mobilizing impact on a wider group of potential voters in EDR states.

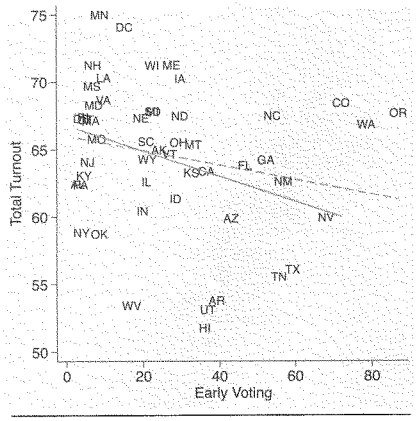
Combinations of laws necessarily blend direct and indirect forces. We hypothesize that the depressive effects of early voting may be overcome if it is paired with EDR, SDR, or both. Although it adds convenience, a primary limitation of early voting by itself is that it fails to circumvent registration closing dates, which screen out voters who do not register in advance. SDR and especially EDR eliminate this problem by offering one-stop shopping and allowing individuals who become interested late in the campaign to be mobilized into voting. The positive turnout effects of EDR have already been demonstrated in the literature. Our main theoretical contention is that early voting alone decreases turnout, but that EDR and SDR have the potential to offset that effect.

[6] The Election Assistance Commission (EAC) collected data on SDR for the first time in 2008; the EAC defines SDR as "registering to vote on the same day in which a vote may be cast" (2009a, 2009b).

[7] But see Huber and Arceneaux (2007) and Krasno and Green (2008) for evidence that campaign ads have little influence on turnout.

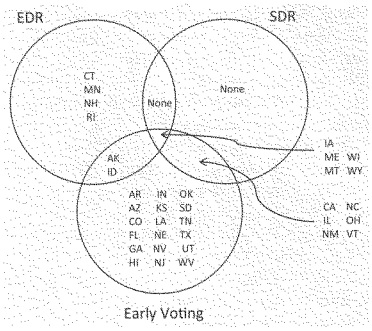
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FIGURE 1 Early Voting and Turnout in the States in 2008



Note: Dotted regression line represents all states. Solid regression line omits OR and WA.

FIGURE 2 Combinations of EDR, SDR, and Early Voting in 2008



The idea that making voting easier will reduce turnout is certainly counterintuitive. To establish the plausibility of the argument, we begin with Figure 1, which plots overall state-level voter turnout in the 2008 presidential election against the percentage of votes cast early, using data from the Current Population Survey. The negative relationship is clear: higher early voting rates are associated with lower overall turnout. The dotted line is the bivariate regression line; the solid line is the regression with Washington and Oregon omitted (as they have unique mail-in-balloting rules). In both cases, the slope is negative and statistically significant.

This bivariate analysis is only a starting point, as it neither captures the complexity of the relationships nor accounts for the control variables that must ultimately be included. But the clarity of the relationship certainly hints that early voting does not increase voter participation. In the next section, we provide more precise specifications of election laws and empirical techniques for estimating the net effects of these laws on voter turnout.

Data and Methods

The first step in analyzing the effect of election laws on turnout is classifying states according to their laws. We have theorized that each specific election practice will have an independent effect, but that different combinations will have distinct effects. Many states adopt multiple reforms, so each distinct combination must be evaluated. The range of terminologies and practices across the states produces the equivalent of 50 different election administration systems; we reduce this variety down to the variation in three key laws. Using the definitions we set out above, we coded each state's laws in both the 2004 and 2008 presidential elections.

Figure 2 is a Venn diagram displaying the different voting rules and combinations in place in 2008. There are 35 states employing one of the five possible permutations of early voting, EDR, and SDR; the 15 states that have none of the three practices—which have no forms of convenience voting—are not shown.[8] The most common approach, used by 18 states, allows early voting but still requires preregistration. We classify 11 states as having EDR and another overlapping 11 having SDR. The supporting information provides more information on our coding of states.

There are seven theoretically possible configurations of EDR, SDR, and early voting: (1) EDR alone, (2) SDR alone, (3) early voting alone, (4) EDR and SDR, (5) EDR and early voting, (6) SDR and early voting, or (7) all three. Because SDR requires early voting, there are no states with just SDR or a two-way combination of SDR and EDR. As a result, there are only five actual combinations, each of

[8]Also omitted are Oregon and Washington, both of which essentially mandate voting by mail, and North Dakota, which officially has no voter registration.

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which we will compare to a baseline of states that have none of these electoral practices.[9]

To determine the effects of these laws on turnout, we analyze two types of data from the 2004 and 2008 presidential elections: county-level election returns and individual data from the Current Population Survey (CPS) November 2004 and 2008 Voting and Registration Supplements. The CPS, a common dataset in voting analysis, is a large-scale sample survey normally used to analyze labor-force data. In November of election years, most questions in the voting battery have between 60,000 and 90,000 valid observations based on interviews with U.S. citizens of voting age. All of our datasets have large sample sizes, an advantage that allows us to make careful comparisons among the states in each section of Figure 2 and to include a wide range of control variables. Analyzing two election years guarantees that the findings are not due to a specific candidate or campaign.

Before we turn to the actual estimates, we consider the potential for endogeneity in our cross-sectional individual- and county-level analyses. Hanmer (2009) and others have challenged observational studies of turnout effects, arguing that election laws are endogenous, and that as a consequence, the most commonly used research methods and statistical techniques produce biased results. The problem is that we cannot directly observe the quantity in which we are most interested: how an individual's behavior changes if the voting rules faced change from no early voting to early voting (or vice versa). Instead, we draw an inference about the impact that early voting has on an individual's likelihood of voting based on the behavior in early voting and nonearly voting states. If election laws are endogenous—if, for example, a state adopted early voting or EDR because turnout was low and legislators wanted to enact laws that would increase turnout, the laws would not be exogenous and our inferences would be biased.

We believe these concerns must be taken seriously, but we do not see them as undermining our conclusions about early voting. First, the universe of states that have adopted different mixes of election reforms is now large and diverse, making it more difficult to make causal arguments about why states adopted any particular package of reforms. In the case of early voting, the states that apply it are so heterogeneous that it seems reasonable to assume that the practice is exogenous, at least in terms of unobserved variables that correlate with turnout.[10] Some states adopted early voting by legislation, others by administrative decision, and yet others by ballot initiative.

Second, we control for variables that might cause a spurious relationship between election laws and turnout. For example, if states with more educated populations or more competitive elections happen to have higher turnout and more convenient election laws, controlling for all of these covariates in a multivariate analysis will leave only the residual effects of the laws themselves to be picked up by our election-system variables. Our rich datasets permit inclusion of a wide array of controls, and we also adjust the standard errors to account for clustering of observation by state (Erikson and Minnite 2009; Primo, Jacobsmeier, and Milyo 2007). This conservative approach allows that observations within a state—whether we are speaking of individuals or counties—are not independent of one another. Moreover, we estimate relationships at both the individual and aggregate levels. This approach combines the strengths of each approach, making us more confident when the findings are consistent across models.

Finally, to address the issue empirically, we conduct several additional analyses conducted to verify the robustness of our key results. These extensions, which include statistical matching, dose response, and difference-in-difference models, should be less subject to potential endogeneity concerns, and all point to similar conclusions about the negative impact of early voting.

Individual-Level Regression Analysis

Our individual-level analysis of the likelihood of voting draws on the Voting and Registration Supplement Files of the CPS for both 2004 and 2008. We use a larger number of independent variables than most other models

[9] An alternative approach would be to create dummies for the three laws (EDR, SDR, and early voting) and interaction terms for each combination for a total of three direct effects, three two-way interactions, and one three-way interaction. After summing various combinations of coefficients to get total effects, the results from the two approaches should be identical. We opt for the five indicators because they offer a simpler and more immediate interpretation. They may also be handled as dichotomous treatments in a matching analysis, which we employ as an additional test.

[10] Early voting is permitted in the South (Georgia, Louisiana, Tennessee, Texas, Florida, North Carolina), the Northeast (Maine, Vermont, New Jersey), the Midwest (Iowa, Wisconsin, Illinois, Indiana, Ohio), the Southwest (Arizona, New Mexico, Colorado, Nevada), and the Far West (California, Hawaii). Early voting exists in states that have traditionally high turnout (Wisconsin, Alaska, Maine) and in states with traditionally low turnout (Nevada, Arizona, Georgia). Some states with traditionally high turnout levels *do not* have early voting (Minnesota, Connecticut, New Hampshire). In short, it is difficult to imagine a common political culture in early voting states that also produces high (or low) levels of turnout.

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of turnout.[11] Alvarez, Bailey, and Katz describe the "canonical model of voter turnout using CPS data" (2011, 28) as using age, residence in a southern state, education, income, squared values of age and education, and nonwhite as independent variables (see also Wolfinger and Rosenstone 1980). In addition, the CPS includes a wide range of plausible and theoretically justifiable turnout covariates, including questions on length of residence, gender, marital status, racial identity, whether a respondent is a natural-born citizen or naturalized, the year of entry into the United States (if naturalized), and whether a respondent's voting status is self-reported or reported by proxy.[12] We err in the conservative direction by including this additional information. We include variables describing the five possible combinations of early voting, SDR, and EDR, as well as separate dummy variables for other election laws, indicators for North Dakota, Oregon, and Washington, and a measure of campaign competitiveness. Campaign competitiveness is the difference between the final preelection poll standings of the two major party nominees, a summary measure taken from Pollster.com. To ease the interpretation of the competitiveness variable, we compute this variable as 100 − |Democratic% − Republican%|, so that higher values indicate a more competitive campaign environment.

The logit results, reported in Table 1, show that individuals are more likely to vote in states with only EDR and less likely to do so in states with only early voting. The results suggest that EDR and SDR can offset the negative effects of early voting when the practices are combined. To facilitate interpretation of the size of the effects, Figure 3 presents the effects translated into changes in the probability of voting, along with the 95% confidence intervals. As this dot plot shows, EDR raises the likelihood of voting by three to four percentage points (although the

[11]The voting item is self-reported, asking whether people voted in the presidential election: respondents can answer "yes," "no," "don't know," "refuse to answer," or have no response recorded. Following the standard practice, we calculate overall turnout by dividing the number of "yes" responses by the total number of individuals who are asked the question, counting as nonvoters those who refused to answer, did not know, or did not respond. Because the voting items are only asked of individuals 18 years or older, this gives us an estimate of turnout as a percentage of the voting-age population. Using this method, 64.9% of respondents in the CPS reported voting in 2008 ($N = 92{,}360$). This percentage is significantly higher than the actual 2008 VAP turnout, estimated at 56.8% (McDonald 2009), but the CPS is one of the most accurate among all election surveys. Although the overreporting phenomenon is well known, the large literature on the problem has generally concluded that the consequences for statistical inference are minor (Highton 2005).

[12]Because they are ineligible to vote, noncitizens are not included in this CPS sample.

TABLE 1 Logit Estimates of Election Laws on Individual Turnout

	2008	2004
Early Voting	−.180***	−.134**
	(.058)	(.062)
Early Voting + SDR	.008	−.048
	(.048)	(.089)
Early Voting + EDR	−.069	.057
	(.128)	(.116)
Early Voting + EDR + SDR	.134	.317***
	(.082)	(.081)
EDR	.191*	.157
	(.092)	(.166)
Other Election Laws		
30-Day Registration Close	−.124**	−.110*
	(.049)	(.063)
ID Requirement	.009	.021
	(.062)	(.077)
Demographics		
Education	.600***	.625***
	(.021)	(.022)
African American	.719***	.400***
	(.061)	(.066)
Hispanic	−.049	−.112***
	(.102)	(.039)
Self-Reported Vote	.823***	.643***
	(.029)	(.025)
Naturalized Citizen	−1.028***	−1.158***
	(.175)	(.144)
Naturalized 10+ Years	.456***	.500***
	(.165)	(.138)
Married	.426***	.490***
	(.024)	(.031)
Residence 1 Year	.269***	.370***
	(.035)	(.033)
Income	.083***	.082***
	(.003)	(.003)
Female	.149***	.109***
	(.018)	(.013)
Age	.025***	.029***
	(.001)	(.001)
Age 18–24	.425***	.465***
	(.038)	(.039)
Age over 75	−.108**	−.138***
	(.053)	(.050)
State Electoral Factors		
Campaign Competitiveness	.011***	.004
	(.003)	(.003)
South	−.075	−.066
	(.058)	(.084)

(Continued)

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TABLE 1 (Continued)

	2008	2004
North Dakota	−.343***	−.066
	(.081)	(.094)
Oregon	.192***	.444***
	(.045)	(.057)
Washington	−.021	.021
	(.064)	(.055)
Constant	−4.774***	−4.311***
	(.261)	(.234)
Pseudo-R^2	.146	.150
Percent Correct Predicted	73.38	73.50
N	73,333	78,244

Note: Cell entries are logit coefficients with robust standard errors clustered by state in parentheses.
*p < .10, **p < .05, ***p < .01, two-tailed test.

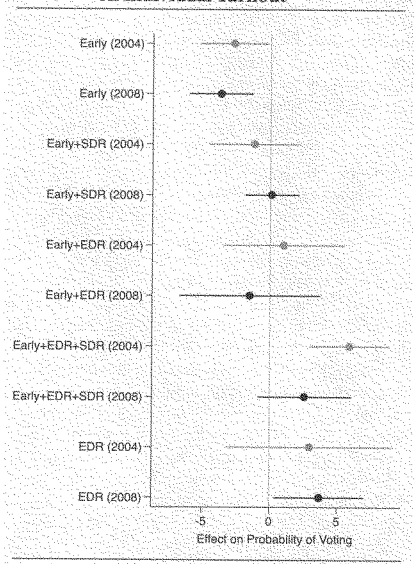
95% confidence interval includes the zero point in 2004). The clearest finding is early voting lowers the likelihood of turnout by three to four percentage points. Other combinations have little effect.[13]

The many control variables behave largely as expected. In line with a long literature, formal education has a large positive effect on turnout. Income, marriage, and long-term residence also show positive effects. Age generally has a positive effect, although with a boost for the youngest individuals and a tailing off in turnout among the oldest. The self-reported vote variable is positive, suggesting that overreporting is more common when the respondent is reporting about herself. Latinos are less likely to vote, but it might be surprising that African Americans are more likely to do so. This is not unusual, however, as several studies have shown that blacks vote at a higher rate than whites once demographic disparities are taken into account (Leighley and Nagler 1992; Tenn 2005). The racial gap is larger in 2008, presumably due to black voter enthusiasm for Barack Obama's candidacy.[14] Finally, campaign competitiveness has a positive effect on turnout, consistent with the notion that intense campaign environments stimulate more voter participation.

[13]In the 2008 model, the Early Voting coefficient is significantly different from the Early Voting + EDR coefficient and the Early Voting + EDR + SDR coefficient (both $p < .01$), but not the Early Voting + EDR coefficient ($p = .39$). In the 2004 model, the Early Voting coefficient is also significantly different from the Early Voting + EDR coefficient ($p = .08$) and the Early Voting + EDR + SDR coefficient ($p < .01$), although not the Early Voting + SDR coefficient ($p = .28$).

[14]Note that if more African Americans were voting early in 2008 because of their enthusiasm for Obama, this actually stacks the deck *against* our claim that early voting drives down turnout.

FIGURE 3 Effects of Election Laws on Individual Turnout



Note: Dots represent predicted probabilities and lines indicate 95% confidence intervals from estimates in Table 1.

The results support the logic that early voting, by undermining the mobilizing effects of Election Day, reduces turnout. This negative effect might be offset by the convenience of early voting, but we hypothesize that early voting facilitates participation by those individuals *already likely to vote.* All else equal, we therefore do not expect the convenience of early voting to increase turnout, because early voting simply provides opportunities for these likely voters; absent early voting, they would have appeared at polling places on Election Day and voted then. To test this idea, we leverage questions in the CPS that ask respondents whether they voted, and if so whether it was on Election Day, early by mail, or early in person. The CPS marginals are close to the national estimates of early and mail voting and thus offer a valid way to assess the effects of the different voting rules. With this information, we can construct a four-category choice variable for individuals: they can vote on Election Day, vote prior to Election Day in person, vote prior to Election Day by mail, or not vote. Multinomial logit is the appropriate method to analyze this dependent variable, and the results will highlight

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the effect of the independent variables on the specific choices that voters and nonvoters make. The results of our application, using the same independent variables as in the basic individual-level model above, are reported in Table 2. In the model, the reference (i.e., excluded) category is voting on Election Day, so all coefficients are interpreted relative to traditional Election Day balloting.

The results show that states with some form of early voting in place have higher proportions of those who do not vote. The primary coefficients we are interested in for this model are those that we know indicate a higher likelihood of voting, based on existing research, such as age, education, and income. As Table 2 shows, the coefficients for these variables are all negative in the "did not vote" column but positive in two "voted early" columns, telling us that early voters score higher on these dimensions. The CPS results therefore suggest that early voters comprise a population that, based on demographics, is more likely to vote than the population of voters that cast their ballots on Election Day. Most notable is this: in states with early voting, even combined with other election laws, people are simply less likely to vote. This result holds for both 2004 and 2008.

Next, we replicated our models using data preprocessed with a matching method. This approach allows us to consider the various voting administrative practices as analogous to a "treatment" effect applied to individuals. We separate our observations into two categories, those in states with early voting—our treatment—and those in states with no convenience voting at all—our control. This is necessary to ensure that our results are not affected by other voting laws. Ideally this severs the connection between the demographic characteristics and early voting, essentially creating a random experiment. Comparing the average treatment effect gives us a good estimate of the effect of, in this case, early voting. Details of the matching process, including balance statistics, may be found in the supplemental information.

We show the logistic regression results in Table 3 and stress that we are comparing early voting states to those states with no forms of convenience voting. These results confirm our basic result that early voting depresses turnout, with an effect of −3.3 percentage points in 2004 and −7.2 percentage points in 2008.[15]

The rest of the variables behave as expected. For example, in both years turnout is more likely among the educated, older people, those who are married, African Americans, and those with higher incomes. The one exception is the competitiveness variable, which shows a negative effect on turnout. However, the estimated effects are tiny and reach significance because of the large sample size. More importantly, the analysis demonstrates that the negative effects of early voting on individuals are not specification dependent.

[15]The dummy variable for North Dakota drops out because there were no observations from that state in the matched sample.

County-Level Regression Analysis

To further replicate our analysis, we analyze county-level aggregate turnout data. Here the dependent variable is turnout in the 2004 and 2008 presidential elections as a percentage of the voting-age population. The "voting-eligible population" would be a preferable measure, but it is not available at the county level. As in the first individual-level model, the key explanatory variables are dichotomous indicators for each of the five configurations of voting rules. As in the individual models, the control variables include other election laws, an array of demographics, and a measure of competitiveness. Demographic controls at the county level include the percent African American and Hispanic, median income, percentage of adults with bachelor's degrees, percentage 65 or older, total population, and population density. The results are weighted by county population to overcome the heteroskedasticity caused by the wide range in county populations.

The full ordinary least squares (OLS) results are presented in Table A3 in the supplemental information. On its own, the effect of early voting is negative in both models, but significant only in 2008. As other research has suggested, EDR by itself appears to increase turnout by several points. The depressive effects of early voting are helped minimally by SDR, but much more by EDR or the combination of both forms of one-stop shopping. This combination would seem to encourage both stimulation of new voters and retention of regular voters. Most of the other variables—ranging from demographics to campaign competitiveness—operate as expected. There is some variation between the results of the individual model in Table 1, which is to be expected because the models are estimating different quantities: the percentage turnout in a county versus the probability that an individual votes. Nonetheless, there is evidence in both datasets that EDR increases turnout and that early voting lowers turnout.

We enhance this basic analysis in two ways. First, we conduct a "dose-response" analysis. Stepping away from the dichotomous coding for the presence or absence of state laws, the logic of this approach is that our confidence in the causal effects will be greater if more of a particular variable (dose) produces a larger effect (response). If our theory is correct, these models will

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TABLE 2 Multinomial Logit of Election Laws on Individual Turnout

	Did Not Vote		Voted Early in Person		Voted Early by Mail	
	2008	**2004**	**2008**	**2004**	**2008**	**2004**
Early Voting	.509***	.353***	2.251***	2.200***	1.150***	1.048***
	(.102)	(.083)	(.456)	(.597)	(.403)	(.271)
Early Voting + SDR	.382***	.269*	1.974***	1.701**	1.875***	1.670***
	(.097)	(.154)	(.507)	(.760)	(.482)	(.509)
Early Voting + EDR	.391*	.115	2.081***	1.846***	1.523***	1.208***
	(.162)	(.136)	(.478)	(.587)	(.423)	(.302)
Early Voting + EDR+ SDR	.168	-.139	2.051***	1.676***	1.401***	1.274***
	(.102)	(.104)	(.472)	(.561)	(.338)	(.309)
EDR	−.141	−.139	−.250	−.009	−.231	−.081
	(.089)	(.104)	(.474)	(.665)	(.467)	(.350)
Other Election Laws						
30-Day Registration Close	.135	.168*	.441	.693	−.420	−.086
	(.083)	(.092)	(.285)	(.461)	(.342)	(.257)
ID Requirement	.081	.080	−.361	.032	.956**	.947***
	(.091)	(.084)	(.455)	(.639)	(.345)	(.219)
Demographics						
Education	−.552***	−.597***	.196***	.166***	.172***	.152***
	(.023)	(.023)	(.028)	(.025)	(.027)	(.024)
African American	−.662***	−.475***	.537***	−.428***	−.317***	−.622***
	(.069)	(.070)	(.142)	(.144)	(.114)	(.101)
Hispanic	.050	.135***	.054	.208	−.044	−.130
	(.129)	(.047)	(.163)	(.183)	(.165)	(.086)
Self-Reported Vote	−.839***	−.665***	.035	.036	−.085**	−.180***
	(.030)	(.025)	(.027)	(.034)	(.037)	(.031)
Naturalized Citizen	1.024***	1.296***	−.070	.052	.050	.864***
	(.185)	(.152)	(.318)	(.377)	(.164)	(.251)
Naturalized 10+ Years	−.454***	−.621***	−.145	−.059	.044	−.839***
	(.171)	(.137)	(.270)	(.395)	(.194)	(.255)
Married	−.462***	−.526***	−.044	−.033	−.182***	−.263***
	(.028)	(.029)	(.055)	(.063)	(.052)	(.052)
Residence 1 Year	−.331***	−.380***	−.265***	−.115*	−.217***	−.017
	(.038)	(.036)	(.051)	(.061)	(.053)	(.076)
Income	−.077***	−.080***	.030***	.013	.021**	.011
	(.004)	(.003)	(.009)	(.010)	(.008)	(.007)
Female	−.116***	−.101***	.096***	.023	.147***	.047*
	(.018)	(.013)	(.031)	(.031)	(.024)	(.026)
Age	−.019***	−.025***	.019***	.022**	.032**	.032***
	(.002)	(.001)	(.002)	(.002)	(.003)	(.002)
Age 18–24	−.270***	−.327***	.297***	.397***	.952***	1.132***
	(.043)	(.040)	(.102)	(.090)	(.144)	(.147)
Age over 75	.196***	.188***	−.117	−.376***	.324***	.284***
	(.061)	(.052)	(.076)	(.062)	(.094)	(.067)
State Electoral Factors						
Campaign Competitiveness	−.006	−.002	.040	.012	.005	.018*
	(.005)	(.004)	(.025)	(.018)	(.013)	(.011)

(Continued)

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TABLE 2 (Continued)

	Did Not Vote		Voted Early in Person		Voted Early by Mail	
	2008	**2004**	**2008**	**2004**	**2008**	**2004**
South	.236**	.139	1.289***	1.326***	−.592	−.649
	(.115)	(.098)	(.343)	(.461)	(.380)	(.238)
North Dakota	.224*	−.005	.085	.177	−.932	−.689*
	(.119)	(.120)	(.358)	(.825)	(.391)	(.347)
Oregon	1.927***	2.091***	1.070**	1.824***	5.195***	5.858***
	(.081)	(.073)	(.458)	(.592)	(.302)	(.230)
Washington	1.497***	.918***	.809*	.292	3.528***	3.788***
	(.087)	(.074)	(.450)	(.579)	(.409)	(.229)
Constant	3.909***	3.884***	−8.997***	−7.423***	−5.683***	−6.927***
	(.433)	(.309)	(1.907)	(1.559)	(1.135)	(1.014)
Pseudo-R^2	.169	.167				
Percent Correct Predicted	58.24	63.23				
N	73,183	78,139				

Note: Reference category is voting on Election Day. Cell entries are multinomial logit coefficients with robust standard errors clustered by state in parentheses.
*p < .10, **p < .05, ***p < .01, two-tailed test.

show that longer early voting periods decrease turnout, whereas longer SDR windows will increase turnout. Table 4 presents another version of the 2008 county turnout model. Instead of including dummy variables for each set of election laws, two new variables measure the *number of days* that early voting and SDR were available. We estimate models with these variables entered separately and simultaneously. In all specifications, the results show that a longer window increases turnout in the case of SDR but decreases it in the case of early voting. The estimates suggest that an additional 10 days of early voting decreases voter turnout by about a percentage point while an additional 10 days of SDR increases turnout by about 2.5 points. These results hold whether the window length variables are entered separately or simultaneously into the model. Control variables continue to perform largely as expected.

Second, to address concerns about endogeneity most directly, we estimate difference-in-difference models on the county aggregate data. Such models are frequently employed for research of this type in which policy interventions thought to influence political behavior might be shaped in part by that behavior (Bowler, Brockington, and Donovan 2001; Erikson and Minnite 2009; Giammo and Brox 2010; Hanmer 2009; Leighley and Nagler 2009). Its key strength is its identification through a pre-post, within-subjects comparison of "treatment" and "control" groups. It alleviates concerns about endogeneity by modeling how changes in an outcome (turnout) are affected by changes in a treatment (early voting). In the short term, it is unlikely that such policy innovations are endogenous, and any inherent differences in turnout among states are factored out automatically by design, removing the concern that some unmeasured variables could be responsible for the observed relationship.[16]

We regress the change in turnout between 2008 and 2004 on the changes in early voting and EDR laws between those same two years. One limitation of this approach is that only three of the five combinations of laws were altered between 2004 and 2008. Fortunately, early voting was among them.[17] Note also that in the aggregate, this comparison actually works against our hypothesis. Both early voting and overall turnout increased between the two elections.

Table 5 displays three specifications of the difference-in-difference model. Column I displays the simplest version with no control variables. Column II adds a control for a key variable, the change in campaign

[16] An even more powerful approach would track jurisdictions over a longer period of time. Funk (2010) is able to do a longitudinal analysis in her study of postal voting in Switzerland. Some studies suggest that initial effects of election laws vary over time (Ansolabehere and Konisky 2006; Giammo and Brox 2010).

[17] Note that for all three combinations of laws, we are measuring the effects of adoption because no state repealed any of these practices between 2004 and 2008. A concern is that few states actually changed their election laws during this period, providing less than ideal statistical leverage. In particular, for the three-way combination of early voting, EDR, and SDR, only one state (New Jersey, with 21 counties) moved, lowering our confidence in that estimated effect. The early voting effect is based on new laws in three states (a total of 290 counties).

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TABLE 3 Individual-Level Effects of Early Voting Using Matched Samples

	2008	2004
Early Voting	−.227***	−.159**
	(.058)	(.061)
Other Election Laws		
30-Day Registration Close	−.159**	−.135
	(.066)	(.088)
ID Requirement	−.005	.121
	(.067)	(.078)
Demographics		
Education	.588***	.634***
	(.025)	(.027)
African American	.727***	.369***
	(.070)	(.081)
Hispanic	−.113	−.115*
	(.105)	(.060)
Self-Reported Vote	.857***	.651***
	(.037)	(.032)
Naturalized Citizen	−1.180***	−1.244***
	(.128)	(.204)
Naturalized 10+ Years	.547**	.668***
	(.174)	(.186)
Married	.425***	.481***
	(.032)	(.036)
Residence 1 Year	.312***	.362***
	(.045)	(.044)
Income	.086***	.085***
	(.004)	(.004)
Female	.166***	.107***
	(.021)	(.018)
Age	.025***	.031
	(.001)	(.018)
Age 18–24	.384***	.484***
	(.041)	(.045)
Age over 75	−.099	−.165**
	(.067)	(.059)
State Electoral Factors		
Campaign Competitiveness	−.010**	−.0014***
	(.004)	(.003)
South	−.057	−.093
	(.071)	(.122)
Oregon	−.125**	.506***
	(.056)	(.058)
Washington	−.068	.071
	(.059)	(.057)
Constant	−4.685***	−3.99***
	(.322)	(.214)
Pseudo-R^2	.151	.152
Percent Correctly Predicted	73.48	72.85
N	50,481	47,553

Note: Cell entries are logit regression estimates with robust standard errors clustered by state in parentheses.
*p < .10, **p < .05, ***p < .01, two-tailed test.

TABLE 4 Regression Estimates of Early Voting and SDR Windows on County Turnout in 2008

	Early Voting	SDR	Both
Early Voting	−.077*		−.125***
Window (in days)	(.042)		(.027)
SDR Window		.230***	.280***
(in days)		(.054)	(.049)
Other Election Laws			
30-Day Registration	−1.798	−.760	−.714
Close	(1.2508)	(1.140)	(.949)
ID Requirement	−1.065	.781	1.198
	(1.396)	(1.242)	(1.074)
Demographics			
Percent African	.051	.076**	.076***
American	(.032)	(.030)	(.028)
Percent Hispanic	−.289***	−.292***	−.268***
	(.035)	(.044)	(.034)
Median Income	.125**	.141**	.152***
(in 1,000s)	(.048)	(.055)	(.052)
Percent College	.257***	.267***	.255***
Graduates	(.052)	(.048)	(.050)
Percent 65 or Older	.255**	.356***	.323***
	(.102)	(.087)	(.083)
Population	−.034	−.059	−.051
(in 100,000s)	(.030)	(.040)	(.036)
Population Density	−.0003***	−.0002***	−.0002***
	(.00004)	(.00003)	(.00003)
State Electoral Factors			
Campaign	.350***	.246***	.299***
Competitiveness	(.072)	(.068)	(.058)
South	−3.636***	−3.091**	−3.703***
	(1.151)	(1.215)	(1.024)
North Dakota	−2.828	−4.038**	−5.227***
	(1.920)	(1.661)	(1.493)
Oregon	2.527**	5.257***	5.898***
	(.980)	(.793)	(.840)
Washington	3.152**	4.205***	4.614***
	(1.569)	(1.537)	(1.304)
Constant	20.663***	23.257***	20.180***
	(5.869)	(4.907)	(4.531)
R^2	.677	.701	.723
N	3,108	3,108	3,108

Note: Cell entries are OLS regression estimates with robust standard errors clustered by state in parentheses. Estimates are weighted by population.
*p < .10, **p < .05, ***p < .01, two-tailed test.

competitiveness. Column III is the richest specification that includes change in several election laws, an indicator for whether a simultaneous U.S. Senate race took place, and a number of demographic controls. These controls allow the change in turnout (i.e., slope of change) to

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TABLE 5 County Difference-in-Difference Models

	I	II	III
ΔEarly Voting	−2.694***	−2.099***	−2.699***
	(.618)	(.620)	(.508)
ΔEarly Voting + SDR	.107	.363	−.281
	(.259)	(.287)	(.369)
ΔEarly Voting + EDR + SDR	−3.853***	−3.361***	−1.839***
	(.695)	(.651)	(.574)
Other Election Laws			
ΔID Requirement			.433
			(.340)
Demographics			
Percent African American			.139***
			(.009)
Percent Hispanic			.024***
			(.005)
Median Income (in 1,000s)			.071***
			(.011)
Percent College Graduates			.009
			(.012)
Percent 65 or Older			−.007
			(.023)
Population (in 100,000s)			.002
			(.012)
Population Density			−.00005***
			(.000016)
State Electoral Factors			
ΔCampaign Competitiveness		.046***	.031**
		(.014)	(.014)
ΔSenate Race			.042
			(.136)
Constant	2.142***	2.214**	−3.097***
	(.114)	(.125)	(.581)
R^2	.053	.069	.405
N	3,109	3,108	3,108

Note: Cell entries are linear regression coefficients with robust standard errors clustered by county in parentheses. Dependent variable and key independent variables are differenced. The same states held gubernatorial elections in 2004 and 2008, so this variable is not differenced. Wisconsin was the only state to change its closing date.

*p < .10, **p < .05, ***p < .01, two-tailed test.

vary depending on the population characteristics of the county. All three models use linear regression with standard errors clustered by county because each county is observed at two points in time.[18]

All three models show that in states that added early voting between 2004 and 2008, county turnout fell by two to three points. It is surprising that the combination of all three laws appears to decrease turnout in the first two models, but the magnitude of the effect declines with the fullest specification in the final column and, as noted, is based on only one state. In the fullest specification, early voting decreases county turnout by 2.7 percentage points. This estimate is remarkably similar to the cross-sectional results above, and we are therefore more confident about the causal nature of the effect.

Conclusion

While we have offered evidence on differential effects of election laws on turnout and have proposed a theoretical explanation for why those effects occur, there is clearly a great deal for future research to consider. At the broadest level, the question of how the state shapes the exercise of the franchise is one of central interest to political science. We offer evidence that one of the most popular election reforms among state governments may inadvertently result in fewer voters at the polls and provide a theory to explain this counterintuitive result. Election reform has goals other than increasing turnout, including minimizing costs and administrative burden, but if policy makers wish to heighten voter participation, they would be wise to consider both the direct and indirect consequences of their actions. Typically, policy makers focus on the immediate effects that new laws have on the cost of voting but seldom consider how those compare to the secondary effects of mobilization, both strategic and nonstrategic. A related research question that deserves attention is whether partisan vote share and some demographic groups are affected more than others by these laws.

There is also need for more comprehensive evidence to illuminate the precise mechanisms for how early voting demobilizes voters. This would include analysis of campaigns' get-out-the-vote efforts, location of field offices, party transfers, and other efforts aimed at stimulating turnout.[19] If our claim is correct, mobilization efforts should diminish in battleground states with high levels of early voting when compared to competitive states in which a smaller percentage of the electorate has already voted. Broadening the conception of mobilization

[18]This is the approach used in Milyo's (2007) study of voter ID's impact on turnout. While in the cross-sectional models above clustering was applied by state, in the difference-in-difference framework, state factors are held constant, so we apply clustering by county to account for correlated errors over time. If state clustering is used instead, the estimated effect of early voting is unaffected, but the standard errors do increase beyond the standard .05 level of significance.

[19]Our cursory analysis of party transfers finds that national parties transferred less money into early voting states, even after controlling for competitiveness and other factors.

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to other, nonstrategic mechanisms such as local news coverage, actions by election administrators, discussion with friends and family, and other signs of Election Day activity should offer evidence of the degree to which the negative impact of early voting on turnout is driven by the civic nature of Election Day itself. Finally, while early voting has a negative effect on turnout in two quite different presidential elections, it is possible that its effect could be different in elections with lower turnout, such as midterms and off-cycle local elections. Future research should sort out this potential impact of early voting. There may be opportunities for field experiments to provide additional leverage on these questions.

We have shown that election reforms cannot be studied in isolation. Instead, researchers must consider the different combinations of voting reforms as they actually appear in the states. This is the only way to capture the full effects of these complex and overlapping rules. Each policy instrument has the potential to shape the costs of voting both directly and indirectly, and these net effects are, surprisingly, sometimes negative.

Our unambiguous empirical claims are based on multiple data sources and methods: despite being a popular election reform, early voting depresses net voter turnout. The only consistent way to increase turnout is to permit Election Day registration. Early voting reduces turnout by robbing Election Day of its stimulating effects. This depressant effect is only partially offset if SDR is present or if EDR offers a vehicle for the last-minute mobilization of marginal voters. This result upends the conventional view that anything that makes voting easier will raise turnout.

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Supporting Information

Additional Supporting Information may be found in the online version of this article at the publisher's website:

Figure A1: Television Campaign Advertising by Level of Early Voting

Table A2: Individual Level Variable and Overall Balance Measures Before and After Matching

Table A3: Regression Estimates of Election Laws on County Turnout

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The Georgia Election Reform Bill:

A Reasonable and Responsible Exercise of the Georgia Legislature's Constitutional Duties

Cleta Mitchell, Esq.

Senior Legal Fellow for Election Integrity

Conservative Partnership Institute

There have been myriad falsehoods and negative attacks against the State of Georgia for its enactment of "The Election Integrity Act of 2021" (SB 202), passed by the Georgia legislature and signed by Governor Brian Kemp in March 2021.

In the weeks following the 2020 general election, the legislature conducted a series of hearings and investigative efforts which then continued after the legislature convened in 2021. Substantial information, testimony, sworn affidavits, and other evidence was presented to the legislature regarding the problems surrounding the 2020 election. This followed both state and national criticism two years earlier related to the 2018 Georgia gubernatorial election. ("Democrat Stacey Abrams on Monday allowed that she is not the governor of Georgia, but said formally conceding the 2018 election to Gov. Brian Kemp would be an implicit acknowledgment that the system was 'fair.'" Stacey Abrams: Conceding Georgia governor's race would mean the process was 'fair' - Washington Times, August 19, 2019)(Stacey Abrams Says Republicans 'Stole' 2018 Election | Newsmax.com, April 3, 2019).

In fact, Stacey Abrams established a new organization 'Fair Vote", galvanized by her loss in the 2018 race for governor: "….Georgia's 2018 elections shone a bright light on the issue with elections that were rife with mismanagement, irregularities, unbelievably long lines and more, exposing both recent and also decades-long actions and inactions by the state to thwart the right to vote" *See* About Fair Fight Action | Fair Fight.

Sen. William Ligon, Chairman of the Election Law Study Subcommittee of the Georgia Standing Senate Judiciary Committee issued a report regarding the testimony heard at the December 3, 2020 hearing of the Elections Subcommittee. THE_FINAL REPORT.PDF (senatorligon.com). Additionally, there are multiple reports and videotaped testimony related to the other hearings and information provided to the Subcommittee during the course of its investigation of the reported problems from the 2020 election. *See* Senator William Ligon :: Third District :: State Senator (senatorligon.com) The Senate Government Oversight Committee

also conducted separate hearings and heard testimony regarding the 2020 election. Georgia Senate Election Hearing Transcript December 3 - Rev

The Georgia House of Representatives likewise held hearings and heard testimony about problems in the 2020 general election. Georgia House of Representatives Holds Hearing on 2020 Election Irregularities | Judicial Watch

Partisans from both parties and both ends of the political spectrum have complained bitterly for several years now about what all perceive to be a system in Georgia that has been fraught with problems, incompetent administration, and failure to abide by the state's election code in myriad respects, engendering suspicion and concerns about the outcome of the last two statewide elections.

It is against that backdrop that the legislature in 2021 began to address the specific issues outlined in the findings of fact contained in SB 202, whose stated purpose is to make it easier to vote but harder to cheat.

In fact, SB 202 does much of both: making it easier to vote in multiple ways, while also adding safeguards to make it much harder for fraud and illegality to invade the election process.

The provisions of SB 202 appear below, divided between the two principles: easier to vote and harder to cheat.

Without going into detail insofar as the changes to the administrative section of the new law, suffice to say that the legislature certainly has the constitutional and statutory authority to assign and reassign duties to executive branch administrators of elections, and to determine whether and how an executive branch official is to conduct the affairs of his office. That is exactly what the administrative sections of the legislation accomplished.

The substantive provisions of the new law can be delineated into those making it easier to vote while strengthening the provisions that make it harder to engage in activities that are illegal under the law.

One way to better understand what is – and is not – in the new law is to divide the provisions into those remaining two substantive categories:

EASIER TO VOTE

- Expands early voting to a minimum of 17 days from former minimum of 16 days

- Requires two Saturday early voting days in each county
- Optional Sunday voting, up to two Sundays
- Allows local registrars to extend early voting hours
- Allows election officials to direct voters to their correct precinct prior to 5 pm on Election Day; provisional ballots after 5 pm
- Precincts with more than 2,000 voters that had wait times more than an hour in the previous election must create additional precincts or add resources to reduce wait times on election day in the next election
- Authorizes new hotline in GA attorney general's office to report voting issues
- Reduces from 180 days to 78 days the time before an election for requesting an absentee ballot – to make it easier for voters to remember if they have or have not requested their absentee ballot
- Eligible electors in jail or detention provided process for voting
- Counties must establish at least one ballot drop box for depositing absentee ballots during early voting, with additional drop boxes allowed based on population or advance voting locations in the county.
- Establishes procedures for voters to cure deficiencies in applications for absentee ballots to enable them to vote
- Hospitalized eligible voters may apply for absentee ballots after the deadline and have ballots delivered to the hospital
- An absentee voter whose identifying information doesn't match is notified and has opportunity to cure
- Self service water may be provided by the election officials to voters waiting in line to vote
- Expands types of identification that can be used for establishing identity of voter in the event voter does not have government issued photo identification

HARDER TO CHEAT

- Voter Identification is now required for all voting, including absentee, not just in-person voting, but with alternate types of ID (bank statement, utility bill) allowed if the voter does not have a government-issued ID.
- Drop boxes, which are now required for each county, must be supervised at all times
- Ballots collected daily from drop boxes, documenting chain of custody
- Prohibits ballot trafficking by third parties, protecting vulnerable and disadvantaged voters from undue influence
- No private money (a la Zuckerbucks) can be accepted by local election offices
- Regular list maintenance required, specifically to remove voters who have died, moved to another state or have otherwise become ineligible to vote in Georgia
- Ballots printed on secure paper so they can be authenticated
- New hotline in GA attorney general's office to report voting issues
- Reduces from 180 days to 78 days the time before an election for requesting an absentee ballot
- Notice to public of equipment testing prior to election

- No pre-filled absentee ballot applications by third parties OR election officials – all third party absentee ballot applications must clearly state that it is NOT an official application or absentee ballot
- Shortens the time for sending absentee ballots to eligible applicants to no more than 29 days before the election (rather than 49 days) and no later than 25 days (from 45 days) before most elections (except for Overseas and Military ballots)
- Absentee voters must sign oath that affirms the voter was able to cast secret ballot, without observation or interference by third parties
- Procedures for opening absentee ballot envelopes are strengthened and monitors must be allowed to witness
- Requires continuation of tabulating of votes once started, until completed
- Authorizes audits of absentee ballot applications and ballots at any point during 24 months following an election
- Observers required to undergo poll watcher training and meaningful observation must be allowed by election officials
- Third parties, other than election officials, cannot provide any thing of value to voters waiting to vote or in exchange for their votes
- Election officials must post by 10 pm on Election Night the number of ballots issued in each category (in person, absentee, provisional, overseas, etc.) and any discrepancies between numbers of ballots issued and number of votes tabulated must be investigated
- Ballots damaged or illegible may be duplicated but only by bipartisan teams of witnesses, and must be assigned a number corresponding to original damaged ballot
- Establishes pilot project for digital imaging of scanned paper ballots
- Establishes criminal penalties for election officials who accept ballots in a manner contrary to law
- Scanned ballot images are defined as public records, subject to Open Records law

There is nothing in any of the listed provisions that comes close to 'voter suppression'. If, by strengthening the proof of identity provisions for absentee voting suppresses people from falsely and illegally impersonating another voter and misappropriating the identity of other voters, that is a perfectly positive outcome that benefits the entire election administration process.

In conclusion, the Georgia legislature has responded to the testimony and data from multiple hearings, meetings, discussions with constituents and known concerns with election law violations in order to restore confidence on the part of Georgia citizens in the election process and outcomes in Georgia going forward. ###

Syllabus.

SOUTH CAROLINA *v.* KATZENBACH, ATTORNEY GENERAL.

ON BILL OF COMPLAINT.

No. 22, Orig. Argued January 17–18, 1966.—Decided March 7, 1966.

Invoking the Court's original jurisdiction under Art. III, § 2, of the Constitution, South Carolina filed a bill of complaint seeking a declaration of unconstitutionality as to certain provisions of the Voting Rights Act of 1965 and an injunction against their enforcement by defendant, the Attorney General. The Act's key features, aimed at areas where voting discrimination has been most flagrant, are: (1) A coverage formula or "triggering mechanism" in § 4 (b) determining applicability of its substantive provisions; (2) provision in § 4 (a) for temporary suspension of a State's voting tests or devices; (3) procedure in § 5 for review of new voting rules; and (4) a program in §§ 6 (b), 7, 9, and 13 (a) for using federal examiners to qualify applicants for registration who are thereafter entitled to vote in all elections. These remedial sections automatically apply to any State or its subdivision which the Attorney General has determined maintained on November 1, 1964, a registration or voting "test or device" (a literacy, educational, character, or voucher requirement as defined in § 4 (c)) and in which according to the Census Director's determination less than half the voting-age residents were registered or voted in the 1964 presidential election. Statutory coverage may be terminated by a declaratory judgment of a three-judge District of Columbia District Court that for the preceding five years racially discriminatory voting tests or devices have not been used. No person in a covered area may be denied voting rights because of failure to comply with a test or device. § 4 (a). Following administrative determinations, enforcement was temporarily suspended of South Carolina's literacy test as well as of tests and devices in certain other areas. The Act further provides in § 5 that during the suspension period, a State or subdivision may not apply new voting rules unless the Attorney General has interposed no objection within 60 days of their submission to him, or a three-judge District of Columbia District Court has issued a declaratory judgment that such rules are not racially discriminatory. South Carolina wishes to apply a recent amendment to its voting laws without following these procedures. In

any political subdivision where tests or devices have been suspended, the Civil Service Commission shall appoint voting examiners whenever the Attorney General has, after considering specified factors, duly certified receiving complaints of official racial voting discrimination from at least 20 residents or that the examiners' appointment is otherwise necessary under the Fifteenth Amendment. § 6 (b). Examiners are to transmit to the appropriate officials the names of applicants they find qualified; and such persons may vote in any election after 45 days following transmission of their names. § 7 (b). Removal by the examiners of names from voting lists is provided on loss of eligibility or on successful challenge under prescribed procedures. § 7 (d). The use of examiners is terminated if requested by the Attorney General or the political subdivision has obtained a declaratory judgment as specified in § 13 (a). Following certification by the Attorney General, federal examiners were appointed in two South Carolina counties as well as elsewhere in other States. Subsidiary cures for persistent voting discrimination and other special provisions are also contained in the Act. In addition to a general assault on the Act as unconstitutionally encroaching on States' rights, specific constitutional challenges by plaintiff and certain *amici curiae* are: The coverage formula violates the principle of equality between the States, denies due process through an invalid presumption, bars judicial review of administrative findings, is a bill of attainder, and legislatively adjudicates guilt; the review of new voting rules infringes Art. III by directing the District Court to issue advisory opinions; the assignment of federal examiners violates due process by foreclosing judicial review of administrative findings and impairs the separation of powers by giving the Attorney General judicial functions; the challenge procedure denies due process on account of its speed; and provisions for adjudication in the District of Columbia abridge due process by limiting litigation to a distant forum. *Held:*

1. This Court's judicial review does not cover portions of the Voting Rights Act of 1965 not challenged by plaintiff; nor does it extend to the Act's criminal provisions, as to which South Carolina's challenge is premature. Pp. 316–317.

2. The sections of the Act properly before this Court are a valid effectuation of the Fifteenth Amendment. Pp. 308–337.

(a) The Act's voluminous legislative history discloses unremitting and ingenious defiance in certain parts of the country of

the Fifteenth Amendment (see paragraphs (b)–(d), *infra*) which Congress concluded called for sterner and more elaborate measures than those previously used. P. 309.

(b) Beginning in 1890, a few years before repeal of most of the legislation to enforce the Fifteenth Amendment, Alabama, Georgia, Louisiana, Mississippi, North Carolina, South Carolina and Virginia enacted tests, still in use, specifically designed to prevent Negroes from voting while permitting white persons to vote. Pp. 310–311.

(c) A variety of methods was used thereafter to keep Negroes from voting, one of the principal means being through racially discriminatory application of voting tests. Pp. 311–313.

(d) Case-by-case litigation against voting discrimination under the Civil Rights Acts of 1957, 1960, and 1964, has not appreciably increased Negro registration. Voting suits have been onerous to prepare, protracted, and where successful have often been followed by a shift in discriminatory devices, defiance or evasion of court orders. Pp. 313–315.

(e) A State is not a "person" within the meaning of the Due Process Clause of the Fifth Amendment; nor does it have standing to invoke the Bill of Attainder Clause of Art. I or the principle of separation of powers, which exist only to protect private individuals or groups. Pp. 323–324.

(f) Congress, as against the reserved powers of the States, may use any rational means to effectuate the constitutional prohibition of racial voting discrimination. P. 324.

(g) The Fifteenth Amendment, which is self-executing, supersedes contrary exertions of state power, and its enforcement is not confined to judicial invalidation of racially discriminatory state statutes and procedures or to general legislative prohibitions against violations of the Amendment. Pp. 325, 327.

(h) Congress, whose power to enforce the Fifteenth Amendment has repeatedly been upheld in the past, is free to use whatever means are appropriate to carry out the objects of the Constitution. *McCulloch* v. *Maryland*, 4 Wheat. 316; *Ex parte Virginia*, 100 U. S. 339, 345–346. Pp. 326–327.

(i) Having determined case-by-case litigation inadequate to deal with racial voting discrimination, Congress has ample authority to prescribe remedies not requiring prior adjudication. P. 328.

(j) Congress is well within its powers in focusing upon the geographic areas where substantial racial voting discrimination had occurred. Pp. 328–329.

(k) Congress had reliable evidence of voting discrimination in a great majority of the areas covered by § 4 (b) of the Act and is warranted in inferring a significant danger of racial voting discrimination in the few other areas to which the formula in § 4 (b) applies. Pp. 329–330.

(l) The coverage formula is rational in theory since tests or devices have so long been used for disenfranchisement and a lower voting rate obviously results from such disenfranchisement. P. 330.

(m) The coverage formula is rational as being aimed at areas where widespread discrimination has existed through misuse of tests or devices even though it excludes certain areas where there is voting discrimination through other means. The Act, moreover, strengthens existing remedies for such discrimination in those other areas. Pp. 330–331.

(n) The provision for termination at the behest of the States of § 4 (b) coverage adequately deals with possible overbreadth; nor is the burden of proof imposed on the States unreasonable. Pp. 331–332.

(o) Limiting litigation to a single court in the District of Columbia is a permissible exercise of power under Art. III, § 1, of the Constitution, previously exercised by Congress on other occasions. Pp. 331–332.

(p) The Act's bar of judicial review of findings of the Attorney General and Census Director as to objective data is not unreasonable. This Court has sanctioned withdrawal of judicial review of administrative determinations in numerous other situations. Pp. 332–333.

(q) Congress has power to suspend literacy tests, it having found that such tests were used for discriminatory purposes in most of the States covered; their continuance, even if fairly administered, would freeze the effect of past discrimination; and re-registration of all voters would be too harsh an alternative. Such States cannot sincerely complain of electoral dilution by Negro illiterates when they long permitted white illiterates to vote. P. 334.

(r) Congress is warranted in suspending, pending federal scrutiny, new voting regulations in view of the way in which some States have previously employed new rules to circumvent adverse federal court decrees. P. 335.

(s) The provision whereby a State whose voting laws have been suspended under § 4 (a) must obtain judicial review of an amendment to such laws by the District Court for the District of Columbia presents a "controversy" under Art. III of the Constitution and therefore does not involve an advisory opinion contravening that provision. P. 335.

(t) The procedure for appointing federal examiners is an appropriate congressional response to the local tactics used to defy or evade federal court decrees. The challenge procedures contain precautionary features against error or fraud and are amply warranted in view of Congress' knowledge of harassing challenging tactics against registered Negroes. P. 336.

(u) Section 6 (b) has adequate standards to guide determination by the Attorney General in his selection of areas where federal examiners are to be appointed; and the termination procedures in § 13 (b) provide for indirect judicial review. Pp. 336–337.

Bill of complaint dismissed.

David W. Robinson II and *Daniel R. McLeod,* Attorney General of South Carolina, argued the cause for the plaintiff. With them on the brief was *David W. Robinson.*

Attorney General Katzenbach, defendant, argued the cause *pro se.* With him on the brief were *Solicitor General Marshall, Assistant Attorney General Doar, Ralph S. Spritzer, Louis F. Claiborne, Robert S. Rifkind, David L. Norman* and *Alan G. Marer.*

R. D. McIlwaine III, Assistant Attorney General, argued the cause for the Commonwealth of Virginia, as *amicus curiae,* in support of the plaintiff. With him on the brief were *Robert Y. Button,* Attorney General, and *Henry T. Wickham. Jack P. F. Gremillion,* Attorney General, argued the cause for the State of Louisiana, as *amicus curiae,* in support of the plaintiff. With him on the brief were *Harry J. Kron,* Assistant Attorney General, *Thomas W. McFerrin, Sr., Sidney W. Provensal, Jr.,* and *Alfred Avins. Richmond M. Flowers,* Attorney General, and *Francis J. Mizell, Jr.,* argued the cause for

the State of Alabama, as *amicus curiae,* in support of the plaintiff. With them on the briefs were *George C. Wallace,* Governor of Alabama, *Gordon Madison,* Assistant Attorney General, and *Reid B. Barnes. Joe T. Patterson,* Attorney General, and *Charles Clark,* Special Assistant Attorney General, argued the cause for the State of Mississippi, as *amicus curiae,* in support of the plaintiff. With them on the brief was *Dugas Shands,* Assistant Attorney General. *E. Freeman Leverett,* Deputy Assistant Attorney General, argued the cause for the State of Georgia, as *amicus curiae,* in support of the plaintiff. With him on the brief was *Arthur K. Bolton,* Attorney General.

Levin H. Campbell, Assistant Attorney General, and *Archibald Cox,* Special Assistant Attorney General, argued the cause for the Commonwealth of Massachusetts, as *amicus curiae,* in support of the defendant. With *Mr. Campbell* on the brief was *Edward W. Brooke,* Attorney General, joined by the following States through their Attorneys General and other officials as follows: *Bert T. Kobayashi* of Hawaii; *John J. Dillon* of Indiana, *Theodore D. Wilson,* Assistant Attorney General, and *John O. Moss,* Deputy Attorney General; *Lawrence F. Scalise* of Iowa; *Robert C. Londerholm* of Kansas; *Richard J. Dubord* of Maine; *Thomas B. Finan* of Maryland; *Frank J. Kelley* of Michigan, and *Robert A. Derengoski,* Solicitor General; *Forrest H. Anderson* of Montana; *Arthur J. Sills* of New Jersey; *Louis J. Lefkowitz* of New York; *Charles Nesbitt* of Oklahoma, and *Charles L. Owens,* Assistant Attorney General; *Robert Y. Thornton* of Oregon; *Walter E. Alessandroni* of Pennsylvania; *J. Joseph Nugent* of Rhode Island; *John P. Connarn* of Vermont; *C. Donald Robertson* of West Virginia; and *Bronson C. LaFollette* of Wisconsin. *Alan B. Handler,* First Assistant Attorney General, argued the cause for the State of New Jersey, as *amicus curiae,* in

support of the defendant. Briefs of *amici curiae*, in support of the defendant, were filed by *Thomas C. Lynch*, Attorney General, *Miles J. Rubin*, Senior Assistant Attorney General, *Dan Kaufmann*, Assistant Attorney General, and *Charles B. McKesson*, *David N. Rakov* and *Philip M. Rosten*, Deputy Attorneys General, for the State of California; and by *William G. Clark*, Attorney General, *Richard E. Friedman*, First Assistant Attorney General, and *Richard A. Michael* and *Philip J. Rock*, Assistant Attorneys General, for the State of Illinois.

MR. CHIEF JUSTICE WARREN delivered the opinion of the Court.

By leave of the Court, 382 U. S. 898, South Carolina has filed a bill of complaint, seeking a declaration that selected provisions of the Voting Rights Act of 1965 [1] violate the Federal Constitution, and asking for an injunction against enforcement of these provisions by the Attorney General. Original jurisdiction is founded on the presence of a controversy between a State and a citizen of another State under Art. III, § 2, of the Constitution. See *Georgia* v. *Pennsylvania R. Co.*, 324 U. S. 439. Because no issues of fact were raised in the complaint, and because of South Carolina's desire to obtain a ruling prior to its primary elections in June 1966, we dispensed with appointment of a special master and expedited our hearing of the case.

Recognizing that the questions presented were of urgent concern to the entire country, we invited all of the States to participate in this proceeding as friends of the Court. A majority responded by submitting or joining in briefs on the merits, some supporting South Carolina and others the Attorney General.[2] Seven of these States

[1] 79 Stat. 437, 42 U. S. C. § 1973 (1964 ed., Supp. I).

[2] States supporting South Carolina: Alabama, Georgia, Louisiana, Mississippi, and Virginia. States supporting the Attorney General: California, Illinois, and Massachusetts, joined by Hawaii, Indiana,

also requested and received permission to argue the case orally at our hearing. Without exception, despite the emotional overtones of the proceeding, the briefs and oral arguments were temperate, lawyerlike and constructive. All viewpoints on the issues have been fully developed, and this additional assistance has been most helpful to the Court.

The Voting Rights Act was designed by Congress to banish the blight of racial discrimination in voting, which has infected the electoral process in parts of our country for nearly a century. The Act creates stringent new remedies for voting discrimination where it persists on a pervasive scale, and in addition the statute strengthens existing remedies for pockets of voting discrimination elsewhere in the country. Congress assumed the power to prescribe these remedies from § 2 of the Fifteenth Amendment, which authorizes the National Legislature to effectuate by "appropriate" measures the constitutional prohibition against racial discrimination in voting. We hold that the sections of the Act which are properly before us are an appropriate means for carrying out Congress' constitutional responsibilities and are consonant with all other provisions of the Constitution. We therefore deny South Carolina's request that enforcement of these sections of the Act be enjoined.

I.

The constitutional propriety of the Voting Rights Act of 1965 must be judged with reference to the historical experience which it reflects. Before enacting the measure, Congress explored with great care the problem of racial discrimination in voting. The House and Senate Committees on the Judiciary each held hearings for nine days and received testimony from a total of 67 wit-

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Iowa, Kansas, Maine, Maryland, Michigan, Montana, New Hampshire, New Jersey, New York, Oklahoma, Oregon, Pennsylvania, Rhode Island, Vermont, West Virginia, and Wisconsin.

nesses.[3] More than three full days were consumed discussing the bill on the floor of the House, while the debate in the Senate covered 26 days in all.[4] At the close of these deliberations, the verdict of both chambers was overwhelming. The House approved the bill by a vote of 328–74, and the measure passed the Senate by a margin of 79–18.

Two points emerge vividly from the voluminous legislative history of the Act contained in the committee hearings and floor debates. First: Congress felt itself confronted by an insidious and pervasive evil which had been perpetrated in certain parts of our country through unremitting and ingenious defiance of the Constitution. Second: Congress concluded that the unsuccessful remedies which it had prescribed in the past would have to be replaced by sterner and more elaborate measures in order to satisfy the clear commands of the Fifteenth Amendment. We pause here to summarize the majority reports of the House and Senate Committees, which document in considerable detail the factual basis for these reactions by Congress.[5] See H. R. Rep. No. 439, 89th Cong., 1st Sess., 8–16 (hereinafter cited as House Report); S. Rep. No. 162, pt. 3, 89th Cong., 1st Sess., 3–16 (hereinafter cited as Senate Report).

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[3] See Hearings on H. R. 6400 before Subcommittee No. 5 of the House Committee on the Judiciary, 89th Cong., 1st Sess. (hereinafter cited as House Hearings); Hearings on S. 1564 before the Senate Committee on the Judiciary, 89th Cong., 1st Sess. (hereinafter cited as Senate Hearings).

[4] See the Congressional Record for April 22, 23, 26, 27, 28, 29, 30; May 3, 4, 5, 6, 7, 10, 11, 12, 13, 14, 17, 18, 19, 20, 21, 24, 25, 26; July 6, 7, 8, 9; August 3 and 4, 1965.

[5] The facts contained in these reports are confirmed, among other sources, by *United States* v. *Louisiana*, 225 F. Supp. 353, 363–385 (Wisdom, J.), aff'd, 380 U. S. 145; *United States* v. *Mississippi*, 229 F. Supp. 925, 983–997 (dissenting opinion of Brown, J.), rev'd and rem'd, 380 U. S. 128; *United States* v. *Alabama*, 192 F. Supp. 677

The Fifteenth Amendment to the Constitution was ratified in 1870. Promptly thereafter Congress passed the Enforcement Act of 1870,[6] which made it a crime for public officers and private persons to obstruct exercise of the right to vote. The statute was amended in the following year[7] to provide for detailed federal supervision of the electoral process, from registration to the certification of returns. As the years passed and fervor for racial equality waned, enforcement of the laws became spotty and ineffective, and most of their provisions were repealed in 1894.[8] The remnants have had little significance in the recently renewed battle against voting discrimination.

Meanwhile, beginning in 1890, the States of Alabama, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, and Virginia enacted tests still in use which were specifically designed to prevent Negroes from voting.[9] Typically, they made the ability to read and write

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(Johnson, J.), aff'd, 304 F. 2d 583, aff'd, 371 U. S. 37; Comm'n on Civil Rights, Voting in Mississippi; 1963 Comm'n on Civil Rights Rep., Voting; 1961 Comm'n on Civil Rights Rep., Voting, pt. 2; 1959 Comm'n on Civil Rights Rep., pt. 2. See generally Christopher, The Constitutionality of the Voting Rights Act of 1965, 18 Stan. L. Rev. 1; Note, Federal Protection of Negro Voting Rights, 51 Va. L. Rev. 1051.

[6] 16 Stat. 140.

[7] 16 Stat. 433.

[8] 28 Stat. 36.

[9] The South Carolina Constitutional Convention of 1895 was a leader in the widespread movement to disenfranchise Negroes. Key, Southern Politics, 537–539. Senator Ben Tillman frankly explained to the state delegates the aim of the new literacy test: "[T]he only thing we can do as patriots and as statesmen is to take from [the 'ignorant blacks'] every ballot that we can under the laws of our national government." He was equally candid about the exemption from the literacy test for persons who could "understand" and "explain" a section of the state constitution: "There is no particle of fraud or illegality in it. It is just simply showing partiality, perhaps, [laughter,] or discriminating." He described the alternative exemp-

a registration qualification and also required completion of a registration form. These laws were based on the fact that as of 1890 in each of the named States, more than two-thirds of the adult Negroes were illiterate while less than one-quarter of the adult whites were unable to read or write.[10] At the same time, alternate tests were prescribed in all of the named States to assure that white illiterates would not be deprived of the franchise. These included grandfather clauses, property qualifications, "good character" tests, and the requirement that registrants "understand" or "interpret" certain matter.

The course of subsequent Fifteenth Amendment litigation in this Court demonstrates the variety and persistence of these and similar institutions designed to deprive Negroes of the right to vote. Grandfather clauses were invalidated in *Guinn* v. *United States,* 238 U. S. 347, and *Myers* v. *Anderson,* 238 U. S. 368. Procedural hurdles were struck down in *Lane* v. *Wilson,* 307 U. S. 268. The white primary was outlawed in *Smith* v. *Allwright,* 321 U. S. 649, and *Terry* v. *Adams,* 345 U. S. 461. Improper challenges were nullified in *United States* v. *Thomas,* 362 U. S. 58. Racial gerrymandering was forbidden by *Gomillion* v. *Lightfoot,* 364 U. S. 339. Finally, discriminatory application of voting tests was condemned in *Schnell* v. *Davis,* 336 U. S. 933; *Alabama*

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tion for persons paying state property taxes in the same vein: "By means of the $300 clause you simply reach out and take in some more white men and a few more colored men." Journal of the Constitutional Convention of the State of South Carolina 464, 469, 471 (1895). Senator Tillman was the dominant political figure in the state convention, and his entire address merits examination.

[10] Prior to the Civil War, most of the slave States made it a crime to teach Negroes how to read or write. Following the war, these States rapidly instituted racial segregation in their public schools. Throughout the period, free public education in the South had barely begun to develop. See *Brown* v. *Board of Education,* 347 U. S. 483, 489–490, n. 4; 1959 Comm'n on Civil Rights Rep. 147–151.

v. *United States,* 371 U. S. 37; and *Louisiana* v. *United States,* 380 U. S. 145.

According to the evidence in recent Justice Department voting suits, the latter stratagem is now the principal method used to bar Negroes from the polls. Discriminatory administration of voting qualifications has been found in all eight Alabama cases, in all nine Louisiana cases, and in all nine Mississippi cases which have gone to final judgment.[11] Moreover, in almost all of these cases, the courts have held that the discrimination was pursuant to a widespread "pattern or practice." White applicants for registration have often been excused altogether from the literacy and understanding tests or have been given easy versions, have received extensive help from voting officials, and have been registered despite serious errors in their answers.[12] Negroes, on the other hand, have typically been required to pass difficult versions of all the tests, without any outside assistance and without the slightest error.[13] The good-morals require-

[11] For example, see three voting suits brought against the States themselves: *United States* v. *Alabama,* 192 F. Supp. 677, aff'd, 304 F. 2d 583, aff'd, 371 U. S. 37; *United States* v. *Louisiana,* 225 F. Supp. 353, aff'd, 380 U. S. 145; *United States* v. *Mississippi,* 339 F. 2d 679.

[12] A white applicant in Louisiana satisfied the registrar of his ability to interpret the state constitution by writing, "FRDUM FOOF SPETGH." *United States* v. *Louisiana,* 225 F. Supp. 353, 384. A white applicant in Alabama who had never completed the first grade of school was enrolled after the registrar filled out the entire form for him. *United States* v. *Penton,* 212 F. Supp. 193, 210–211.

[13] In Panola County, Mississippi, the registrar required Negroes to interpret the provision of the state constitution concerning "the rate of interest on the fund known as the 'Chickasaw School Fund.'" *United States* v. *Duke,* 332 F. 2d 759, 764. In Forrest County, Mississippi, the registrar rejected six Negroes with baccalaureate degrees, three of whom were also Masters of Arts. *United States* v. *Lynd,* 301 F. 2d 818, 821.

ment is so vague and subjective that it has constituted an open invitation to abuse at the hands of voting officials.[14] Negroes obliged to obtain vouchers from registered voters have found it virtually impossible to comply in areas where almost no Negroes are on the rolls.[15]

In recent years, Congress has repeatedly tried to cope with the problem by facilitating case-by-case litigation against voting discrimination. The Civil Rights Act of 1957 [16] authorized the Attorney General to seek injunctions against public and private interference with the right to vote on racial grounds. Perfecting amendments in the Civil Rights Act of 1960 [17] permitted the joinder of States as parties defendant, gave the Attorney General access to local voting records, and authorized courts to register voters in areas of systematic discrimination. Title I of the Civil Rights Act of 1964 [18] expedited the hearing of voting cases before three-judge courts and outlawed some of the tactics used to disqualify Negroes from voting in federal elections.

Despite the earnest efforts of the Justice Department and of many federal judges, these new laws have done little to cure the problem of voting discrimination. According to estimates by the Attorney General during hearings on the Act, registration of voting-age Negroes in Alabama rose only from 14.2% to 19.4% between 1958 and 1964; in Louisiana it barely inched ahead from 31.7% to 31.8% between 1956 and 1965; and in Mississippi it increased only from 4.4% to 6.4% between 1954 and 1964. In each instance, registration of voting-age whites ran roughly 50 percentage points or more ahead of Negro registration.

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[14] For example, see *United States* v. *Atkins*, 323 F. 2d 733, 743.

[15] For example, see *United States* v. *Logue*, 344 F. 2d 290, 292.

[16] 71 Stat. 634.

[17] 74 Stat. 86.

[18] 78 Stat. 241, 42 U. S. C. § 1971 (1964 ed.).

The previous legislation has proved ineffective for a number of reasons. Voting suits are unusually onerous to prepare, sometimes requiring as many as 6,000 man-hours spent combing through registration records in preparation for trial. Litigation has been exceedingly slow, in part because of the ample opportunities for delay afforded voting officials and others involved in the proceedings. Even when favorable decisions have finally been obtained, some of the States affected have merely switched to discriminatory devices not covered by the federal decrees or have enacted difficult new tests designed to prolong the existing disparity between white and Negro registration.[19] Alternatively, certain local officials have defied and evaded court orders or have simply closed their registration offices to freeze the voting rolls.[20] The provision of the 1960 law authorizing registration by federal officers has had little impact on local maladministration because of its procedural complexities.

During the hearings and debates on the Act, Selma, Alabama, was repeatedly referred to as the pre-eminent example of the ineffectiveness of existing legislation. In Dallas County, of which Selma is the seat, there were four years of litigation by the Justice Department and two findings by the federal courts of widespread voting discrimination. Yet in those four years, Negro registra-

[19] The Court of Appeals for the Fifth Circuit ordered the registrars of Forrest County, Mississippi, to give future Negro applicants the same assistance which white applicants had enjoyed in the past, and to register future Negro applicants despite errors which were not serious enough to disqualify white applicants in the past. The Mississippi Legislature promptly responded by requiring applicants to complete their registration forms without assistance or error, and by adding a good-morals and public-challenge provision to the registration laws. *United States* v. *Mississippi*, 229 F. Supp. 925, 996–997 (dissenting opinion).

[20] For example, see *United States* v. *Parker*, 236 F. Supp. 511; *United States* v. *Palmer*, 230 F. Supp. 716.

tion rose only from 156 to 383, although there are approximately 15,000 Negroes of voting age in the county. Any possibility that these figures were attributable to political apathy was dispelled by the protest demonstrations in Selma in the early months of 1965. The House Committee on the Judiciary summed up the reaction of Congress to these developments in the following words:

> "The litigation in Dallas County took more than 4 years to open the door to the exercise of constitutional rights conferred almost a century ago. The problem on a national scale is that the difficulties experienced in suits in Dallas County have been encountered over and over again under existing voting laws. Four years is too long. The burden is too heavy—the wrong to our citizens is too serious—the damage to our national conscience is too great not to adopt more effective measures than exist today.
>
> "Such is the essential justification for the pending bill." House Report 11.

II.

The Voting Rights Act of 1965 reflects Congress' firm intention to rid the country of racial discrimination in voting.[21] The heart of the Act is a complex scheme of stringent remedies aimed at areas where voting discrimination has been most flagrant. Section 4 (a)–(d) lays down a formula defining the States and political subdivisions to which these new remedies apply. The first of the remedies, contained in § 4 (a), is the suspension of literacy tests and similar voting qualifications for a period of five years from the last occurrence of substantial voting discrimination. Section 5 prescribes a second

[21] For convenient reference, the entire Act is reprinted in an Appendix to this opinion.

remedy, the suspension of all new voting regulations pending review by federal authorities to determine whether their use would perpetuate voting discrimination. The third remedy, covered in §§ 6 (b), 7, 9, and 13 (a), is the assignment of federal examiners on certification by the Attorney General to list qualified applicants who are thereafter entitled to vote in all elections.

Other provisions of the Act prescribe subsidiary cures for persistent voting discrimination. Section 8 authorizes the appointment of federal poll-watchers in places to which federal examiners have already been assigned. Section 10 (d) excuses those made eligible to vote in sections of the country covered by § 4 (b) of the Act from paying accumulated past poll taxes for state and local elections. Section 12 (e) provides for balloting by persons denied access to the polls in areas where federal examiners have been appointed.

The remaining remedial portions of the Act are aimed at voting discrimination in any area of the country where it may occur. Section 2 broadly prohibits the use of voting rules to abridge exercise of the franchise on racial grounds. Sections 3, 6 (a), and 13 (b) strengthen existing procedures for attacking voting discrimination by means of litigation. Section 4 (e) excuses citizens educated in American schools conducted in a foreign language from passing English-language literacy tests. Section 10 (a)–(c) facilitates constitutional litigation challenging the imposition of all poll taxes for state and local elections. Sections 11 and 12 (a)–(d) authorize civil and criminal sanctions against interference with the exercise of rights guaranteed by the Act.

At the outset, we emphasize that only some of the many portions of the Act are properly before us. South Carolina has not challenged §§ 2, 3, 4 (e), 6 (a), 8, 10, 12 (d) and (e), 13 (b), and other miscellaneous provisions having nothing to do with this lawsuit. Judicial review of these sections must await subsequent litiga-

tion.[22] In addition, we find that South Carolina's attack on §§ 11 and 12 (a)–(c) is premature. No person has yet been subjected to, or even threatened with, the criminal sanctions which these sections of the Act authorize. See *United States* v. *Raines,* 362 U. S. 17, 20–24. Consequently, the only sections of the Act to be reviewed at this time are §§ 4 (a)–(d), 5, 6 (b), 7, 9, 13 (a), and certain procedural portions of § 14, all of which are presently in actual operation in South Carolina. We turn now to a detailed description of these provisions and their present status.

Coverage formula.

The remedial sections of the Act assailed by South Carolina automatically apply to any State, or to any separate political subdivision such as a county or parish, for which two findings have been made: (1) the Attorney General has determined that on November 1, 1964, it maintained a "test or device," and (2) the Director of the Census has determined that less than 50% of its voting-age residents were registered on November 1, 1964, or voted in the presidential election of November 1964. These findings are not reviewable in any court and are final upon publication in the Federal Register. § 4 (b). As used throughout the Act, the phrase "test or device" means any requirement that a registrant or voter must "(1) demonstrate the ability to read, write, understand, or interpret any matter, (2) demonstrate any educational achievement or his knowledge of any particular subject, (3) possess good moral character, or (4) prove his quali-

[22] Section 4 (e) has been challenged in *Morgan* v. *Katzenbach,* 247 F. Supp. 196, prob. juris. noted, 382 U. S. 1007, and in *United States* v. *County Bd. of Elections,* 248 F. Supp. 316. Section 10 (a)–(c) is involved in *United States* v. *Texas,* 252 F. Supp. 234, and in *United States* v. *Alabama,* 252 F. Supp. 95; see also *Harper* v. *Virginia State Bd. of Elections,* No. 48, 1965 Term, and *Butts* v. *Harrison,* No. 655, 1965 Term, which were argued together before this Court on January 25 and 26, 1966.

fications by the voucher of registered voters or members of any other class." § 4 (c).

Statutory coverage of a State or political subdivision under § 4 (b) is terminated if the area obtains a declaratory judgment from the District Court for the District of Columbia, determining that tests and devices have not been used during the preceding five years to abridge the franchise on racial grounds. The Attorney General shall consent to entry of the judgment if he has no reason to believe that the facts are otherwise. § 4 (a). For the purposes of this section, tests and devices are not deemed to have been used in a forbidden manner if the incidents of discrimination are few in number and have been promptly corrected, if their continuing effects have been abated, and if they are unlikely to recur in the future. § 4 (d). On the other hand, no area may obtain a declaratory judgment for five years after the final decision of a federal court (other than the denial of a judgment under this section of the Act), determining that discrimination through the use of tests or devices has occurred anywhere in the State or political subdivision. These declaratory judgment actions are to be heard by a three-judge panel, with direct appeal to this Court. § 4 (a).

South Carolina was brought within the coverage formula of the Act on August 7, 1965, pursuant to appropriate administrative determinations which have not been challenged in this proceeding.[23] On the same day, coverage was also extended to Alabama, Alaska, Georgia, Louisiana, Mississippi, Virginia, 26 counties in North Carolina, and one county in Arizona.[24] Two more counties in Arizona, one county in Hawaii, and one county in Idaho were added to the list on November 19, 1965.[25]

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[23] 30 Fed. Reg. 9897.

[24] *Ibid.*

[25] 30 Fed. Reg. 14505.

Thus far Alaska, the three Arizona counties, and the single county in Idaho have asked the District Court for the District of Columbia to grant a declaratory judgment terminating statutory coverage.[26]

Suspension of tests.

In a State or political subdivision covered by § 4 (b) of the Act, no person may be denied the right to vote in any election because of his failure to comply with a "test or device." § 4 (a).

On account of this provision, South Carolina is temporarily barred from enforcing the portion of its voting laws which requires every applicant for registration to show that he:

> "Can both read and write any section of [the State] Constitution submitted to [him] by the registration officer or can show that he owns, and has paid all taxes collectible during the previous year on, property in this State assessed at three hundred dollars or more." S. C. Code Ann. § 23–62 (4) (1965 Supp.).

The Attorney General has determined that the property qualification is inseparable from the literacy test,[27] and South Carolina makes no objection to this finding. Similar tests and devices have been temporarily suspended in the other sections of the country listed above.[28]

Review of new rules.

In a State or political subdivision covered by § 4 (b) of the Act, no person may be denied the right to vote in any election because of his failure to comply with a voting qualification or procedure different from those in force on

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[26] *Alaska* v. *United States,* Civ. Act. 101–66; *Apache County* v. *United States,* Civ. Act. 292–66; *Elmore County* v. *United States,* Civ. Act. 320–66.

[27] 30 Fed. Reg. 14045–14046.

[28] For a chart of the tests and devices in effect at the time the Act was under consideration, see House Hearings 30–32; Senate Report 42–43.

November 1, 1964. This suspension of new rules is terminated, however, under either of the following circumstances: (1) if the area has submitted the rules to the Attorney General, and he has not interposed an objection within 60 days, or (2) if the area has obtained a declaratory judgment from the District Court for the District of Columbia, determining that the rules will not abridge the franchise on racial grounds. These declaratory judgment actions are to be heard by a three-judge panel, with direct appeal to this Court. § 5.

South Carolina altered its voting laws in 1965 to extend the closing hour at polling places from 6 p. m. to 7 p. m.[29] The State has not sought judicial review of this change in the District Court for the District of Columbia, nor has it submitted the new rule to the Attorney General for his scrutiny, although at our hearing the Attorney General announced that he does not challenge the amendment. There are indications in the record that other sections of the country listed above have also altered their voting laws since November 1, 1964.[30]

Federal examiners.

In any political subdivision covered by § 4 (b) of the Act, the Civil Service Commission shall appoint voting examiners whenever the Attorney General certifies either of the following facts: (1) that he has received meritorious written complaints from at least 20 residents alleging that they have been disenfranchised under color of law because of their race, or (2) that the appointment of examiners is otherwise necessary to effectuate the guarantees of the Fifteenth Amendment. In making the latter determination, the Attorney General must consider, among other factors, whether the registration ratio of non-whites to whites seems reasonably attributable to

[29] S. C. Code Ann. § 23-342 (1965 Supp.).

[30] Brief for Mississippi as *amicus curiae*, App.

racial discrimination, or whether there is substantial evidence of good-faith efforts to comply with the Fifteenth Amendment. § 6 (b). These certifications are not reviewable in any court and are effective upon publication in the Federal Register. § 4 (b).

The examiners who have been appointed are to test the voting qualifications of applicants according to regulations of the Civil Service Commission prescribing times, places, procedures, and forms. §§ 7 (a) and 9 (b). Any person who meets the voting requirements of state law, insofar as these have not been suspended by the Act, must promptly be placed on a list of eligible voters. Examiners are to transmit their lists at least once a month to the appropriate state or local officials, who in turn are required to place the listed names on the official voting rolls. Any person listed by an examiner is entitled to vote in all elections held more than 45 days after his name has been transmitted. § 7 (b).

A person shall be removed from the voting list by an examiner if he has lost his eligibility under valid state law, or if he has been successfully challenged through the procedure prescribed in § 9 (a) of the Act. § 7 (d). The challenge must be filed at the office within the State designated by the Civil Service Commission; must be submitted within 10 days after the listing is made available for public inspection; must be supported by the affidavits of at least two people having personal knowledge of the relevant facts; and must be served on the person challenged by mail or at his residence. A hearing officer appointed by the Civil Service Commission shall hear the challenge and render a decision within 15 days after the challenge is filed. A petition for review of the hearing officer's decision must be submitted within an additional 15 days after service of the decision on the person seeking review. The court of appeals for the circuit in which the person challenged resides is to

hear the petition and affirm the hearing officer's decision unless it is clearly erroneous. Any person listed by an examiner is entitled to vote pending a final decision of the hearing officer or the court. § 9 (a).

The listing procedures in a political subdivision are terminated under either of the following circumstances: (1) if the Attorney General informs the Civil Service Commission that all persons listed by examiners have been placed on the official voting rolls, and that there is no longer reasonable cause to fear abridgment of the franchise on racial grounds, or (2) if the political subdivision has obtained a declaratory judgment from the District Court for the District of Columbia, ascertaining the same facts which govern termination by the Attorney General, and the Director of the Census has determined that more than 50% of the non-white residents of voting age are registered to vote. A political subdivision may petition the Attorney General to terminate listing procedures or to authorize the necessary census, and the District Court itself shall request the census if the Attorney General's refusal to do so is arbitrary or unreasonable. § 13 (a). The determinations by the Director of the Census are not reviewable in any court and are final upon publication in the Federal Register. § 4 (b).

On October 30, 1965, the Attorney General certified the need for federal examiners in two South Carolina counties,[31] and examiners appointed by the Civil Service Commission have been serving there since November 8, 1965. Examiners have also been assigned to 11 counties in Alabama, five parishes in Louisiana, and 19 counties in Mississippi.[32] The examiners are listing people found eligible to vote, and the challenge procedure has been

[31] 30 Fed. Reg. 13850.

[32] 30 Fed. Reg. 9970–9971, 10863, 12363, 12654, 13849–13850, 15837; 31 Fed. Reg. 914.

employed extensively.[33] No political subdivision has yet sought to have federal examiners withdrawn through the Attorney General or the District Court for the District of Columbia.

III.

These provisions of the Voting Rights Act of 1965 are challenged on the fundamental ground that they exceed the powers of Congress and encroach on an area reserved to the States by the Constitution. South Carolina and certain of the *amici curiae* also attack specific sections of the Act for more particular reasons. They argue that the coverage formula prescribed in § 4 (a)–(d) violates the principle of the equality of States, denies due process by employing an invalid presumption and by barring judicial review of administrative findings, constitutes a forbidden bill of attainder, and impairs the separation of powers by adjudicating guilt through legislation. They claim that the review of new voting rules required in § 5 infringes Article III by directing the District Court to issue advisory opinions. They contend that the assignment of federal examiners authorized in § 6 (b) abridges due process by precluding judicial review of administrative findings and impairs the separation of powers by giving the Attorney General judicial functions; also that the challenge procedure prescribed in § 9 denies due process on account of its speed. Finally, South Carolina and certain of the *amici curiae* maintain that §§ 4 (a) and 5, buttressed by § 14 (b) of the Act, abridge due process by limiting litigation to a distant forum.

Some of these contentions may be dismissed at the outset. The word "person" in the context of the Due Process Clause of the Fifth Amendment cannot, by any reasonable mode of interpretation, be expanded to encompass the States of the Union, and to our knowledge

[33] See Comm'n on Civil Rights, The Voting Rights Act (1965).

this has never been done by any court. See *International Shoe Co.* v. *Cocreham,* 246 La. 244, 266, 164 So. 2d 314, 322, n. 5; cf. *United States* v. *City of Jackson,* 318 F. 2d 1, 8 (C. A. 5th Cir.). Likewise, courts have consistently regarded the Bill of Attainder Clause of Article I and the principle of the separation of powers only as protections for individual persons and private groups, those who are peculiarly vulnerable to nonjudicial determinations of guilt. See *United States* v. *Brown,* 381 U. S. 437; *Ex parte Garland,* 4 Wall. 333. Nor does a State have standing as the parent of its citizens to invoke these constitutional provisions against the Federal Government, the ultimate *parens patriae* of every American citizen. *Massachusetts* v. *Mellon,* 262 U. S. 447, 485–486; *Florida* v. *Mellon,* 273 U. S. 12, 18. The objections to the Act which are raised under these provisions may therefore be considered only as additional aspects of the basic question presented by the case: Has Congress exercised its powers under the Fifteenth Amendment in an appropriate manner with relation to the States?

The ground rules for resolving this question are clear. The language and purpose of the Fifteenth Amendment, the prior decisions construing its several provisions, and the general doctrines of constitutional interpretation, all point to one fundamental principle. As against the reserved powers of the States, Congress may use any rational means to effectuate the constitutional prohibition of racial discrimination in voting. Cf. our rulings last Term, sustaining Title II of the Civil Rights Act of 1964, in *Heart of Atlanta Motel* v. *United States,* 379 U. S. 241, 258–259, 261–262; and *Katzenbach* v. *McClung,* 379 U. S. 294, 303–304. We turn now to a more detailed description of the standards which govern our review of the Act.

Section 1 of the Fifteenth Amendment declares that "[t]he right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude." This declaration has always been treated as self-executing and has repeatedly been construed, without further legislative specification, to invalidate state voting qualifications or procedures which are discriminatory on their face or in practice. See *Neal* v. *Delaware,* 103 U. S. 370; *Guinn* v. *United States,* 238 U. S. 347; *Myers* v. *Anderson,* 238 U. S. 368; *Lane* v. *Wilson,* 307 U. S. 268; *Smith* v. *Allwright,* 321 U. S. 649; *Schnell* v. *Davis,* 336 U. S. 933; *Terry* v. *Adams,* 345 U. S. 461; *United States* v. *Thomas,* 362 U. S. 58; *Gomillion* v. *Lightfoot,* 364 U. S. 339; *Alabama* v. *United States,* 371 U. S. 37; *Louisiana* v. *United States,* 380 U. S. 145. These decisions have been rendered with full respect for the general rule, reiterated last Term in *Carrington* v. *Rash,* 380 U. S. 89, 91, that States "have broad powers to determine the conditions under which the right of suffrage may be exercised." The gist of the matter is that the Fifteenth Amendment supersedes contrary exertions of state power. "When a State exercises power wholly within the domain of state interest, it is insulated from federal judicial review. But such insulation is not carried over when state power is used as an instrument for circumventing a federally protected right." *Gomillion* v. *Lightfoot,* 364 U. S., at 347.

South Carolina contends that the cases cited above are precedents only for the authority of the judiciary to strike down state statutes and procedures—that to allow an exercise of this authority by Congress would be to rob the courts of their rightful constitutional role. On the contrary, § 2 of the Fifteenth Amendment expressly declares that "Congress shall have power to enforce this article by appropriate legislation." By adding this

authorization, the Framers indicated that Congress was to be chiefly responsible for implementing the rights created in § 1. "It is the power of Congress which has been enlarged. Congress is authorized to *enforce* the prohibitions by appropriate legislation. Some legislation is contemplated to make the [Civil War] amendments fully effective." *Ex parte Virginia,* 100 U. S. 339, 345. Accordingly, in addition to the courts, Congress has full remedial powers to effectuate the constitutional prohibition against racial discrimination in voting.

Congress has repeatedly exercised these powers in the past, and its enactments have repeatedly been upheld. For recent examples, see the Civil Rights Act of 1957, which was sustained in *United States* v. *Raines,* 362 U. S. 17; *United States* v. *Thomas, supra;* and *Hannah* v. *Larche,* 363 U. S. 420; and the Civil Rights Act of 1960, which was upheld in *Alabama* v. *United States, supra; Louisiana* v. *United States, supra;* and *United States* v. *Mississippi,* 380 U. S. 128. On the rare occasions when the Court has found an unconstitutional exercise of these powers, in its opinion Congress had attacked evils not comprehended by the Fifteenth Amendment. See *United States* v. *Reese,* 92 U. S. 214; *James* v. *Bowman,* 190 U. S. 127.

The basic test to be applied in a case involving § 2 of the Fifteenth Amendment is the same as in all cases concerning the express powers of Congress with relation to the reserved powers of the States. Chief Justice Marshall laid down the classic formulation, 50 years before the Fifteenth Amendment was ratified:

> "Let the end be legitimate, let it be within the scope of the constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the constitution, are constitutional." *McCulloch* v. *Maryland,* 4 Wheat. 316, 421.

The Court has subsequently echoed his language in describing each of the Civil War Amendments:

> "Whatever legislation is appropriate, that is, adapted to carry out the objects the amendments have in view, whatever tends to enforce submission to the prohibitions they contain, and to secure to all persons the enjoyment of perfect equality of civil rights and the equal protection of the laws against State denial or invasion, if not prohibited, is brought within the domain of congressional power." *Ex parte Virginia,* 100 U. S., at 345–346.

This language was again employed, nearly 50 years later, with reference to Congress' related authority under § 2 of the Eighteenth Amendment. *James Everard's Breweries* v. *Day,* 265 U. S. 545, 558–559.

We therefore reject South Carolina's argument that Congress may appropriately do no more than to forbid violations of the Fifteenth Amendment in general terms—that the task of fashioning specific remedies or of applying them to particular localities must necessarily be left entirely to the courts. Congress is not circumscribed by any such artificial rules under § 2 of the Fifteenth Amendment. In the oft-repeated words of Chief Justice Marshall, referring to another specific legislative authorization in the Constitution, "This power, like all others vested in Congress, is complete in itself, may be exercised to its utmost extent, and acknowledges no limitations, other than are prescribed in the constitution." *Gibbons* v. *Ogden,* 9 Wheat. 1, 196.

IV.

Congress exercised its authority under the Fifteenth Amendment in an inventive manner when it enacted the Voting Rights Act of 1965. First: The measure prescribes remedies for voting discrimination which go into

effect without any need for prior adjudication. This was clearly a legitimate response to the problem, for which there is ample precedent under other constitutional provisions. See *Katzenbach* v. *McClung*, 379 U. S. 294, 302–304; *United States* v. *Darby*, 312 U. S. 100, 120–121. Congress had found that case-by-case litigation was inadequate to combat widespread and persistent discrimination in voting, because of the inordinate amount of time and energy required to overcome the obstructionist tactics invariably encountered in these lawsuits.[34] After enduring nearly a century of systematic resistance to the Fifteenth Amendment, Congress might well decide to shift the advantage of time and inertia from the perpetrators of the evil to its victims. The question remains, of course, whether the specific remedies prescribed in the Act were an appropriate means of combatting the evil, and to this question we shall presently address ourselves.

Second: The Act intentionally confines these remedies to a small number of States and political subdivisions which in most instances were familiar to Congress by name.[35] This, too, was a permissible method of dealing with the problem. Congress had learned that substantial voting discrimination presently occurs in certain sections of the country, and it knew no way of accurately forecasting whether the evil might spread elsewhere in the future.[36] In acceptable legislative fashion, Congress chose to limit its attention to the geographic areas where immediate action seemed necessary. See *McGowan* v. *Maryland*, 366 U. S. 420, 427; *Salsburg* v. *Maryland*, 346 U. S. 545, 550–554. The doctrine of the equality of States, invoked by South Carolina, does not bar this approach, for that doctrine applies only to the terms

[34] House Report 9–11; Senate Report 6–9.

[35] House Report 13; Senate Report 52, 55.

[36] House Hearings 27; Senate Hearings 201.

upon which States are admitted to the Union, and not to the remedies for local evils which have subsequently appeared. See *Coyle* v. *Smith*, 221 U. S. 559, and cases cited therein.

Coverage formula.

We now consider the related question of whether the specific States and political subdivisions within § 4 (b) of the Act were an appropriate target for the new remedies. South Carolina contends that the coverage formula is awkwardly designed in a number of respects and that it disregards various local conditions which have nothing to do with racial discrimination. These arguments, however, are largely beside the point.[37] Congress began work with reliable evidence of actual voting discrimination in a great majority of the States and political subdivisions affected by the new remedies of the Act. The formula eventually evolved to describe these areas was relevant to the problem of voting discrimination, and Congress was therefore entitled to infer a significant danger of the evil in the few remaining States and political subdivisions covered by § 4 (b) of the Act. No more was required to justify the application to these areas of Congress' express powers under the Fifteenth Amendment. Cf. *North American Co.* v. *S. E. C.*, 327 U. S. 686, 710–711; *Assigned Car Cases*, 274 U. S. 564, 582–583.

To be specific, the new remedies of the Act are imposed on three States—Alabama, Louisiana, and Mississippi—in which federal courts have repeatedly found substantial voting discrimination.[38] Section 4 (b) of the Act also embraces two other States—Georgia and South Carolina—plus large portions of a third State—North Carolina—for which there was more fragmentary evidence of

[37] For Congress' defense of the formula, see House Report 13–14; Senate Report 13–14.

[38] House Report 12; Senate Report 9–10.

recent voting discrimination mainly adduced by the Justice Department and the Civil Rights Commission.[39] All of these areas were appropriately subjected to the new remedies. In identifying past evils, Congress obviously may avail itself of information from any probative source. See *Heart of Atlanta Motel* v. *United States*, 379 U. S. 241, 252–253; *Katzenbach* v. *McClung*, 379 U. S., at 299–301.

The areas listed above, for which there was evidence of actual voting discrimination, share two characteristics incorporated by Congress into the coverage formula: the use of tests and devices for voter registration, and a voting rate in the 1964 presidential election at least 12 points below the national average. Tests and devices are relevant to voting discrimination because of their long history as a tool for perpetrating the evil; a low voting rate is pertinent for the obvious reason that widespread disenfranchisement must inevitably affect the number of actual voters. Accordingly, the coverage formula is rational in both practice and theory. It was therefore permissible to impose the new remedies on the few remaining States and political subdivisions covered by the formula, at least in the absence of proof that they have been free of substantial voting discrimination in recent years. Congress is clearly not bound by the rules relating to statutory presumptions in criminal cases when it prescribes civil remedies against other organs of government under § 2 of the Fifteenth Amendment. Compare *United States* v. *Romano*, 382 U. S. 136; *Tot* v. *United States*, 319 U. S. 463.

It is irrelevant that the coverage formula excludes certain localities which do not employ voting tests and

[39] Georgia: House Hearings 160–176; Senate Hearings 1182–1184, 1237, 1253, 1300–1301, 1336–1345. North Carolina: Senate Hearings 27–28, 39, 246–248. South Carolina: House Hearings 114–116, 196–201; Senate Hearings 1353–1354.

devices but for which there is evidence of voting discrimination by other means. Congress had learned that widespread and persistent discrimination in voting during recent years has typically entailed the misuse of tests and devices, and this was the evil for which the new remedies were specifically designed.[40] At the same time, through §§ 3, 6 (a), and 13 (b) of the Act, Congress strengthened existing remedies for voting discrimination in other areas of the country. Legislation need not deal with all phases of a problem in the same way, so long as the distinctions drawn have some basis in practical experience. See *Williamson* v. *Lee Optical Co.*, 348 U. S. 483, 488–489; *Railway Express Agency* v. *New York*, 336 U. S. 106. There are no States or political subdivisions exempted from coverage under § 4 (b) in which the record reveals recent racial discrimination involving tests and devices. This fact confirms the rationality of the formula.

Acknowledging the possibility of overbreadth, the Act provides for termination of special statutory coverage at the behest of States and political subdivisions in which the danger of substantial voting discrimination has not materialized during the preceding five years. Despite South Carolina's argument to the contrary, Congress might appropriately limit litigation under this provision to a single court in the District of Columbia, pursuant to its constitutional power under Art. III, § 1, to "ordain and establish" inferior federal tribunals. See *Bowles* v. *Willingham*, 321 U. S. 503, 510–512; *Yakus* v. *United States*, 321 U. S. 414, 427–431; *Lockerty* v. *Phillips*, 319 U. S. 182. At the present time, contractual claims against the United States for more than $10,000 must be brought in the Court of Claims, and, until 1962, the District of Columbia was the sole venue of suits against

[40] House Hearings 75–77; Senate Hearings 241–243.

federal officers officially residing in the Nation's Capital.[41] We have discovered no suggestion that Congress exceeded constitutional bounds in imposing these limitations on litigation against the Federal Government, and the Act is no less reasonable in this respect.

South Carolina contends that these termination procedures are a nullity because they impose an impossible burden of proof upon States and political subdivisions entitled to relief. As the Attorney General pointed out during hearings on the Act, however, an area need do no more than submit affidavits from voting officials, asserting that they have not been guilty of racial discrimination through the use of tests and devices during the past five years, and then refute whatever evidence to the contrary may be adduced by the Federal Government.[42] Section 4 (d) further assures that an area need not disprove each isolated instance of voting discrimination in order to obtain relief in the termination proceedings. The burden of proof is therefore quite bearable, particularly since the relevant facts relating to the conduct of voting officials are peculiarly within the knowledge of the States and political subdivisions themselves. See *United States* v. *New York, N. H. & H. R. Co.*, 355 U. S. 253, 256, n. 5; cf. *S. E. C.* v. *Ralston Purina Co.*, 346 U. S. 119, 126.

The Act bars direct judicial review of the findings by the Attorney General and the Director of the Census which trigger application of the coverage formula. We reject the claim by Alabama as *amicus curiae* that this provision is invalid because it allows the new remedies of

[41] Regarding claims against the United States, see 28 U. S. C. §§ 1491, 1346 (a) (1964 ed.). Concerning suits against federal officers, see *Stroud* v. *Benson*, 254 F. 2d 448; H. R. Rep. No. 536, 87th Cong., 1st Sess.; S. Rep. No. 1992, 87th Cong., 2d Sess.; 28 U. S. C. § 1391 (e) (1964 ed.); 2 Moore, Federal Practice ¶ 4.29 (1964 ed.).

[42] House Hearings 92–93; Senate Hearings 26–27.

the Act to be imposed in an arbitrary way. The Court has already permitted Congress to withdraw judicial review of administrative determinations in numerous cases involving the statutory rights of private parties. For example, see *United States* v. *California Eastern Line,* 348 U. S. 351; *Switchmen's Union* v. *National Mediation Bd.,* 320 U. S. 297. In this instance, the findings not subject to review consist of objective statistical determinations by the Census Bureau and a routine analysis of state statutes by the Justice Department. These functions are unlikely to arouse any plausible dispute, as South Carolina apparently concedes. In the event that the formula is improperly applied, the area affected can always go into court and obtain termination of coverage under § 4 (b), provided of course that it has not been guilty of voting discrimination in recent years. This procedure serves as a partial substitute for direct judicial review.

Suspension of tests.

We now arrive at consideration of the specific remedies prescribed by the Act for areas included within the coverage formula. South Carolina assails the temporary suspension of existing voting qualifications, reciting the rule laid down by *Lassiter* v. *Northampton County Bd. of Elections,* 360 U. S. 45, that literacy tests and related devices are not in themselves contrary to the Fifteenth Amendment. In that very case, however, the Court went on to say, "Of course a literacy test, fair on its face, may be employed to perpetuate that discrimination which the Fifteenth Amendment was designed to uproot." *Id.,* at 53. The record shows that in most of the States covered by the Act, including South Carolina, various tests and devices have been instituted with the purpose of disenfranchising Negroes, have been framed in such a way as to facilitate this aim, and have been ad-

ministered in a discriminatory fashion for many years.[43] Under these circumstances, the Fifteenth Amendment has clearly been violated. See *Louisiana* v. *United States,* 380 U. S. 145; *Alabama* v. *United States,* 371 U. S. 37; *Schnell* v. *Davis,* 336 U. S. 933.

The Act suspends literacy tests and similar devices for a period of five years from the last occurrence of substantial voting discrimination. This was a legitimate response to the problem, for which there is ample precedent in Fifteenth Amendment cases. *Ibid.* Underlying the response was the feeling that States and political subdivisions which had been allowing white illiterates to vote for years could not sincerely complain about "dilution" of their electorates through the registration of Negro illiterates.[44] Congress knew that continuance of the tests and devices in use at the present time, no matter how fairly administered in the future, would freeze the effect of past discrimination in favor of unqualified white registrants.[45] Congress permissibly rejected the alternative of requiring a complete re-registration of all voters, believing that this would be too harsh on many whites who had enjoyed the franchise for their entire adult lives.[46]

Review of new rules.

The Act suspends new voting regulations pending scrutiny by federal authorities to determine whether their use would violate the Fifteenth Amendment. This may have been an uncommon exercise of congressional power, as South Carolina contends, but the Court has recognized that exceptional conditions can justify legislative measures not otherwise appropriate. See *Home*

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[43] House Report 11–13; Senate Report 4–5, 9–12.

[44] House Report 15; Senate Report 15–16.

[45] House Report 15; Senate Report 16.

[46] House Hearings 17; Senate Hearings 22–23.

Bldg. & Loan Assn. v. *Blaisdell,* 290 U. S. 398; *Wilson* v. *New,* 243 U. S. 332. Congress knew that some of the States covered by § 4 (b) of the Act had resorted to the extraordinary stratagem of contriving new rules of various kinds for the sole purpose of perpetuating voting discrimination in the face of adverse federal court decrees.[47] Congress had reason to suppose that these States might try similar maneuvers in the future in order to evade the remedies for voting discrimination contained in the Act itself. Under the compulsion of these unique circumstances, Congress responded in a permissibly decisive manner.

For reasons already stated, there was nothing inappropriate about limiting litigation under this provision to the District Court for the District of Columbia, and in putting the burden of proof on the areas seeking relief. Nor has Congress authorized the District Court to issue advisory opinions, in violation of the principles of Article III invoked by Georgia as *amicus curiae.* The Act automatically suspends the operation of voting regulations enacted after November 1, 1964, and furnishes mechanisms for enforcing the suspension. A State or political subdivision wishing to make use of a recent amendment to its voting laws therefore has a concrete and immediate "controversy" with the Federal Government. Cf. *Public Utilities Comm'n* v. *United States,* 355 U. S. 534, 536–539; *United States* v. *California,* 332 U. S. 19, 24–25. An appropriate remedy is a judicial determination that continued suspension of the new rule is unnecessary to vindicate rights guaranteed by the Fifteenth Amendment.

Federal examiners.

The Act authorizes the appointment of federal examiners to list qualified applicants who are thereafter

[47] House Report 10–11; Senate Report 8, 12.

entitled to vote, subject to an expeditious challenge procedure. This was clearly an appropriate response to the problem, closely related to remedies authorized in prior cases. See *Alabama* v. *United States, supra; United States* v. *Thomas,* 362 U. S. 58. In many of the political subdivisions covered by § 4 (b) of the Act, voting officials have persistently employed a variety of procedural tactics to deny Negroes the franchise, often in direct defiance or evasion of federal court decrees.[48] Congress realized that merely to suspend voting rules which have been misused or are subject to misuse might leave this localized evil undisturbed. As for the briskness of the challenge procedure, Congress knew that in some of the areas affected, challenges had been persistently employed to harass registered Negroes. It chose to forestall this abuse, at the same time providing alternative ways for removing persons listed through error or fraud.[49] In addition to the judicial challenge procedure, § 7 (d) allows for the removal of names by the examiner himself, and § 11 (c) makes it a crime to obtain a listing through fraud.

In recognition of the fact that there were political subdivisions covered by § 4 (b) of the Act in which the appointment of federal examiners might be unnecessary, Congress assigned the Attorney General the task of determining the localities to which examiners should be sent.[50] There is no warrant for the claim, asserted by Georgia as *amicus curiae,* that the Attorney General is free to use this power in an arbitrary fashion, without regard to the purposes of the Act. Section 6 (b) sets adequate standards to guide the exercise of his discretion, by directing him to calculate the registration ratio of nonwhites to whites, and to weigh evidence of good-faith

[48] House Report 16; Senate Report 15.

[49] Senate Hearings 200.

[50] House Report 16.

efforts to avoid possible voting discrimination. At the same time, the special termination procedures of § 13 (a) provide indirect judicial review for the political subdivisions affected, assuring the withdrawal of federal examiners from areas where they are clearly not needed. Cf. *Carlson* v. *Landon,* 342 U. S. 524, 542–544; *Mulford* v. *Smith,* 307 U. S. 38, 48–49.

After enduring nearly a century of widespread resistance to the Fifteenth Amendment, Congress has marshalled an array of potent weapons against the evil, with authority in the Attorney General to employ them effectively. Many of the areas directly affected by this development have indicated their willingness to abide by any restraints legitimately imposed upon them.[51] We here hold that the portions of the Voting Rights Act properly before us are a valid means for carrying out the commands of the Fifteeenth Amendment. Hopefully, millions of non-white Americans will now be able to participate for the first time on an equal basis in the government under which they live. We may finally look forward to the day when truly "[t]he right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude."

The bill of complaint is *Dismissed.*

APPENDIX TO OPINION OF THE COURT.

Voting Rights Act of 1965.

AN ACT

To enforce the fifteenth amendment to the Constitution of the United States, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress

[51] See Comm'n on Civil Rights, The Voting Rights Act (1965).

assembled, That this Act shall be known as the "Voting Rights Act of 1965."

SEC. 2. 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 States to vote on account of race or color.

SEC. 3. (a) Whenever the Attorney General institutes a proceeding under any statute to enforce the guarantees of the fifteenth amendment in any State or political subdivision the court shall authorize the appointment of Federal examiners by the United States Civil Service Commission in accordance with section 6 to serve for such period of time and for such political subdivisions as the court shall determine is appropriate to enforce the guarantees of the fifteenth amendment (1) as part of any interlocutory order if the court determines that the appointment of such examiners is necessary to enforce such guarantees or (2) as part of any final judgment if the court finds that violations of the fifteenth amendment justifying equitable relief have occurred in such State or subdivision: *Provided,* That the court need not authorize the appointment of examiners if any incidents of denial or abridgement of the right to vote on account of race or color (1) have been few in number and have been promptly and effectively corrected by State or local action, (2) the continuing effect of such incidents has been eliminated, and (3) there is no reasonable probability of their recurrence in the future.

(b) If in a proceeding instituted by the Attorney General under any statute to enforce the guarantees of the fifteenth amendment in any State or political subdivision the court finds that a test or device has been used for the purpose or with the effect of denying or abridging the right of any citizen of the United States to vote on account of race or color, it shall suspend the use of

tests and devices in such State or political subdivisions as the court shall determine is appropriate and for such period as it deems necessary.

(c) If in any proceeding instituted by the Attorney General under any statute to enforce the guarantees of the fifteenth amendment in any State or political subdivision the court finds that violations of the fifteenth amendment justifying equitable relief have occurred within the territory of such State or political subdivision, the court, in addition to such relief as it may grant, shall retain jurisdiction for such period as it may deem appropriate and during such period no voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect at the time the proceeding was commenced shall be enforced unless and until the court finds that such qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color: *Provided,* That such qualification, prerequisite, standard, practice, or procedure may be enforced if the qualification, prerequisite, standard, practice, or procedure has been submitted by the chief legal officer or other appropriate official of such State or subdivision to the Attorney General and the Attorney General has not interposed an objection within sixty days after such submission, except that neither the court's finding nor the Attorney General's failure to object shall bar a subsequent action to enjoin enforcement of such qualification, prerequisite, standard, practice, or procedure.

SEC. 4. (a) To assure that the right of citizens of the United States to vote is not denied or abridged on account of race or color, no citizen shall be denied the right to vote in any Federal, State, or local election because of his failure to comply with any test or device in any State with respect to which the determinations have been

made under subsection (b) or in any political subdivision with respect to which such determinations have been made as a separate unit, unless the United States District Court for the District of Columbia in an action for a declaratory judgment brought by such State or subdivision against the United States has determined that no such test or device has been used during the five years preceding the filing of the action for the purpose or with the effect of denying or abridging the right to vote on account of race or color: *Provided,* That no such declaratory judgment shall issue with respect to any plaintiff for a period of five years after the entry of a final judgment of any court of the United States, other than the denial of a declaratory judgment under this section, whether entered prior to or after the enactment of this Act, determining that denials or abridgments of the right to vote on account of race or color through the use of such tests or devices have occurred anywhere in the territory of such plaintiff.

An action pursuant to this subsection shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of title 28 of the United States Code and any appeal shall lie to the Supreme Court. The court shall retain jurisdiction of any action pursuant to this subsection for five years after judgment and shall reopen the action upon motion of the Attorney General alleging that a test or device has been used for the purpose or with the effect of denying or abridging the right to vote on account of race or color.

If the Attorney General determines that he has no reason to believe that any such test or device has been used during the five years preceding the filing of the action for the purpose or with the effect of denying or abridging the right to vote on account of race or color, he shall consent to the entry of such judgment.

(b) The provisions of subsection (a) shall apply in any State or in any political subdivision of a state which (1) the Attorney General determines maintained on November 1, 1964, any test or device, and with respect to which (2) the Director of the Census determines that less than 50 per centum of the persons of voting age residing therein were registered on November 1, 1964, or that less than 50 per centum of such persons voted in the presidential election of November 1964.

A determination or certification of the Attorney General or of the Director of the Census under this section or under section 6 or section 13 shall not be reviewable in any court and shall be effective upon publication in the Federal Register.

(c) The phrase "test or device" shall mean any requirement that a person as a prerequisite for voting or registration for voting (1) demonstrate the ability to read, write, understand, or interpret any matter, (2) demonstrate any educational achievement or his knowledge of any particular subject, (3) possess good moral character, or (4) prove his qualifications by the voucher of registered voters or members of any other class.

(d) For purposes of this section no State or political subdivision shall be determined to have engaged in the use of tests or devices for the purpose or with the effect of denying or abridging the right to vote on account of race or color if (1) incidents of such use have been few in number and have been promptly and effectively corrected by State or local action, (2) the continuing effect of such incidents has been eliminated, and (3) there is no reasonable probability of their recurrence in the future.

(e)(1) Congress hereby declares that to secure the rights under the fourteenth amendment of persons educated in American-flag schools in which the predominant

classroom language was other than English, it is necessary to prohibit the States from conditioning the right to vote of such persons on ability to read, write, understand, or interpret any matter in the English language.

(2) No person who demonstrates that he has successfully completed the sixth primary grade in a public school in, or a private school accredited by, any State or territory, the District of Columbia, or the Commonwealth of Puerto Rico in which the predominant classroom language was other than English, shall be denied the right to vote in any Federal, State, or local election because of his inability to read, write, understand, or interpret any matter in the English language, except that in States in which State law provides that a different level of education is presumptive of literacy, he shall demonstrate that he has successfully completed an equivalent level of education in a public school in, or a private school accredited by, any State or territory, the District of Columbia, or the Commonwealth of Puerto Rico in which the predominant classroom language was other than English.

SEC. 5. Whenever a State or political subdivision with respect to which the prohibitions set forth in section 4 (a) are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1964, such State or subdivision may institute an action in the United States District Court for the District of Columbia for a declaratory judgment that such qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color, and unless and until the court enters such judgment no person shall be denied the right to vote for failure to comply with such qualification, prerequisite, standard, prac-

tice, or procedure: *Provided,* That such qualification, prerequisite, standard, practice, or procedure may be enforced without such proceeding if the qualification, prerequisite, standard, practice, or procedure has been submitted by the chief legal officer or other appropriate official of such State or subdivision to the Attorney General and the Attorney General has not interposed an objection within sixty days after such submission, except that neither the Attorney General's failure to object nor a declaratory judgment entered under this section shall bar a subsequent action to enjoin enforcement of such qualification, prerequisite, standard, practice, or procedure. Any action under this section shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of title 28 of the United States Code and any appeal shall lie to the Supreme Court.

SEC. 6. Whenever (a) a court has authorized the appointment of examiners pursuant to the provisions of section 3 (a), or (b) unless a declaratory judgment has been rendered under section 4 (a), the Attorney General certifies with respect to any political subdivision named in, or included within the scope of, determinations made under section 4 (b) that (1) he has received complaints in writing from twenty or more residents of such political subdivision alleging that they have been denied the right to vote under color of law on account of race or color, and that he believes such complaints to be meritorious, or (2) that in his judgment (considering, among other factors, whether the ratio of nonwhite persons to white persons registered to vote within such subdivision appears to him to be reasonably attributable to violations of the fifteenth amendment or whether substantial evidence exists that bona fide efforts are being made within such subdivision to comply with the fifteenth amendment), the appointment of examiners is otherwise necessary to

enforce the guarantees of the fifteenth amendment, the Civil Service Commission shall appoint as many examiners for such subdivision as it may deem appropriate to prepare and maintain lists of persons eligible to vote in Federal, State, and local elections. Such examiners, hearing officers provided for in section 9 (a), and other persons deemed necessary by the Commission to carry out the provisions and purposes of this Act shall be appointed, compensated, and separated without regard to the provisions of any statute administered by the Civil Service Commission, and service under this Act shall not be considered employment for the purposes of any statute administered by the Civil Service Commission, except the provisions of section 9 of the Act of August 2, 1939, as amended (5 U. S. C. 118i), prohibiting partisan political activity: *Provided,* That the Commission is authorized, after consulting the head of the appropriate department or agency, to designate suitable persons in the official service of the United States, with their consent, to serve in these positions. Examiners and hearing officers shall have the power to administer oaths.

SEC. 7. (a) The examiners for each political subdivision shall, at such places as the Civil Service Commission shall by regulation designate, examine applicants concerning their qualifications for voting. An application to an examiner shall be in such form as the Commission may require and shall contain allegations that the applicant is not otherwise registered to vote.

(b) Any person whom the examiner finds, in accordance with instructions received under section 9 (b), to have the qualifications prescribed by State law not inconsistent with the Constitution and laws of the United States shall promptly be placed on a list of eligible voters. A challenge to such listing may be made in accordance with section 9 (a) and shall not be the basis for a prosecution under section 12 of this Act. The ex-

aminer shall certify and transmit such list, and any supplements as appropriate, at least once a month, to the offices of the appropriate election officials, with copies to the Attorney General and the attorney general of the State, and any such lists and supplements thereto transmitted during the month shall be available for public inspection on the last business day of the month and in any event not later than the forty-fifth day prior to any election. The appropriate State or local election official shall place such names on the official voting list. Any person whose name appears on the examiner's list shall be entitled and allowed to vote in the election district of his residence unless and until the appropriate election officials shall have been notified that such person has been removed from such list in accordance with subsection (d): *Provided,* That no person shall be entitled to vote in any election by virtue of this Act unless his name shall have been certified and transmitted on such a list to the offices of the appropriate election officials at least forty-five days prior to such election.

(c) The examiner shall issue to each person whose name appears on such a list a certificate evidencing his eligibility to vote.

(d) A person whose name appears on such a list shall be removed therefrom by an examiner if (1) such person has been successfully challenged in accordance with the procedure prescribed in section 9, or (2) he has been determined by an examiner to have lost his eligibility to vote under State law not inconsistent with the Constitution and the laws of the United States.

Sec. 8. Whenever an examiner is serving under this Act in any political subdivision, the Civil Service Commission may assign, at the request of the Attorney General, one or more persons, who may be officers of the United States, (1) to enter and attend at any place for holding an election in such subdivision for the purpose

of observing whether persons who are entitled to vote are being permitted to vote, and (2) to enter and attend at any place for tabulating the votes cast at any election held in such subdivision for the purpose of observing whether votes cast by persons entitled to vote are being properly tabulated. Such persons so assigned shall report to an examiner appointed for such political subdivision, to the Attorney General, and if the appointment of examiners has been authorized pursuant to section 3 (a), to the court.

SEC. 9. (a) Any challenge to a listing on an eligibility list prepared by an examiner shall be heard and determined by a hearing officer appointed by and responsible to the Civil Service Commission and under such rules as the Commission shall by regulation prescribe. Such challenge shall be entertained only if filed at such office within the State as the Civil Service Commission shall by regulation designate, and within ten days after the listing of the challenged person is made available for public inspection, and if supported by (1) the affidavits of at least two persons having personal knowledge of the facts constituting grounds for the challenge, and (2) a certification that a copy of the challenge and affidavits have been served by mail or in person upon the person challenged at his place of residence set out in the application. Such challenge shall be determined within fifteen days after it has been filed. A petition for review of the decision of the hearing officer may be filed in the United States court of appeals for the circuit in which the person challenged resides within fifteen days after service of such decision by mail on the person petitioning for review but no decision of a hearing officer shall be reversed unless clearly erroneous. Any person listed shall be entitled and allowed to vote pending final determination by the hearing officer and by the court.

(b) The times, places, procedures, and form for application and listing pursuant to this Act and removals from the eligibility lists shall be prescribed by regulations promulgated by the Civil Service Commission and the Commision shall, after consultation with the Attorney General, instruct examiners concerning applicable State law not inconsistent with the Constitution and laws of the United States with respect to (1) the qualifications required for listing, and (2) loss of eligibility to vote.

(c) Upon the request of the applicant or the challenger or on its own motion the Civil Service Commission shall have the power to require by subpena the attendance and testimony of witnesses and the production of documentary evidence relating to any matter pending before it under the authority of this section. In case of contumacy or refusal to obey a subpena, any district court of the United States or the United States court of any territory or possession, or the District Court of the United States for the District of Columbia, within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or is domiciled or transacts business, or has appointed an agent for receipt of service of process, upon application by the Attorney General of the United States shall have jurisdiction to issue to such person an order requiring such person to appear before the Commission or a hearing officer, there to produce pertinent, relevant, and nonprivileged documentary evidence if so ordered, or there to give testimony touching the matter under investigation; and any failure to obey such order of the court may be punished by said court as a contempt thereof.

SEC. 10. (a) The Congress finds that the requirement of the payment of a poll tax as a precondition to voting (i) precludes persons of limited means from voting or imposes unreasonable financial hardship upon such per-

sons as a precondition to their exercise of the franchise, (ii) does not bear a reasonable relationship to any legitimate State interest in the conduct of elections, and (iii) in some areas has the purpose or effect of denying persons the right to vote because of race or color. Upon the basis of these findings, Congress declares that the constitutional right of citizens to vote is denied or abridged in some areas by the requirement of the payment of a poll tax as a precondition to voting.

(b) In the exercise of the powers of Congress under section 5 of the fourteenth amendment and section 2 of the fifteenth amendment, the Attorney General is authorized and directed to institute forthwith in the name of the United States such actions, including actions against States or political subdivisions, for declaratory judgment or injunctive relief against the enforcement of any requirement of the payment of a poll tax as a precondition to voting, or substitute therefor enacted after November 1, 1964, as will be necessary to implement the declaration of subsection (a) and the purposes of this section.

(c) The district courts of the United States shall have jurisdiction of such actions which shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of title 28 of the United States Code and any appeal shall lie to the Supreme Court. It shall be the duty of the judges designated to hear the case to assign the case for hearing at the earliest practicable date, to participate in the hearing and determination thereof, and to cause the case to be in every way expedited.

(d) During the pendency of such actions, and thereafter if the courts, notwithstanding this action by the Congress, should declare the requirement of the payment of a poll tax to be constitutional, no citizen of the United States who is a resident of a State or political

subdivision with respect to which determinations have been made under subsection 4 (b) and a declaratory judgment has not been entered under subsection 4 (a), during the first year he becomes otherwise entitled to vote by reason of registration by State or local officials or listing by an examiner, shall be denied the right to vote for failure to pay a poll tax if he tenders payment of such tax for the current year to an examiner or to the appropriate State or local official at least forty-five days prior to election, whether or not such tender would be timely or adequate under State law. An examiner shall have authority to accept such payment from any person authorized by this Act to make an application for listing, and shall issue a receipt for such payment. The examiner shall transmit promptly any such poll tax payment to the office of the State or local official authorized to receive such payment under State law, together with the name and address of the applicant.

SEC. 11. (a) No person acting under color of law shall fail or refuse to permit any person to vote who is entitled to vote under any provision of this Act or is otherwise qualified to vote, or willfully fail or refuse to tabulate, count, and report such person's vote.

(b) No person, whether acting under color of law or otherwise, shall intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for voting or attempting to vote, or intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for urging or aiding any person to vote or attempt to vote, or intimidate, threaten, or coerce any person for exercising any powers or duties under section 3 (a), 6, 8, 9, 10, or 12 (e).

(c) Whoever knowingly or willfully gives false information as to his name, address, or period of residence in the voting district for the purpose of establishing his eligibility to register or vote, or conspires with another

individual for the purpose of encouraging his false registration to vote or illegal voting, or pays or offers to pay or accepts payment either for registration to vote or for voting shall be fined not more than $10,000 or imprisoned not more than five years, or both: *Provided, however,* That this provision shall be applicable only to general, special, or primary elections held solely or in part for the purpose of selecting or electing any candidate for the office of President, Vice President, presidential elector, Member of the United States Senate, Member of the United States House of Representatives, or Delegates or Commissioners from the territories or possessions, or Resident Commissioner of the Commonwealth of Puerto Rico.

(d) Whoever, in any matter within the jurisdiction of an examiner or hearing officer knowingly and willfully falsifies or conceals a material fact, or makes any false, fictitious, or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both.

SEC. 12. (a) Whoever shall deprive or attempt to deprive any person of any right secured by section 2, 3, 4, 5, 7, or 10 or shall violate section 11 (a) or (b), shall be fined not more than $5,000, or imprisoned not more than five years, or both.

(b) Whoever, within a year following an election in a political subdivision in which an examiner has been appointed (1) destroys, defaces, mutilates, or otherwise alters the marking of a paper ballot which has been cast in such election, or (2) alters any official record of voting in such election tabulated from a voting machine or otherwise, shall be fined not more than $5,000, or imprisoned not more than five years, or both.

(c) Whoever conspires to violate the provisions of subsection (a) or (b) of this section, or interferes with any right secured by section 2, 3, 4, 5, 7, 10, or 11 (a) or (b) shall be fined not more than $5,000, or imprisoned not more than five years, or both.

(d) Whenever any person has engaged or there are reasonable grounds to believe that any person is about to engage in any act or practice prohibited by section 2, 3, 4, 5, 7, 10, 11, or subsection (b) of this section, the Attorney General may institute for the United States, or in the name of the United States, an action for preventive relief, including an application for a temporary or permanent injunction, restraining order, or other order, and including an order directed to the State and State or local election officials to require them (1) to permit persons listed under this Act to vote and (2) to count such votes.

(e) Whenever in any political subdivision in which there are examiners appointed pursuant to this Act any persons allege to such an examiner within forty-eight hours after the closing of the polls that notwithstanding (1) their listing under this Act or registration by an appropriate election official and (2) their eligibilty to vote, they have not been permitted to vote in such election, the examiner shall forthwith notify the Attorney General if such allegations in his opinion appear to be well founded. Upon receipt of such notification, the Attorney General may forthwith file with the district court an application for an order providing for the marking, casting, and counting of the ballots of such persons and requiring the inclusion of their votes in the total vote before the results of such election shall be deemed final and any force or effect given thereto. The district court shall hear and determine such matters immediately after the filing of such application. The remedy pro-

vided in this subsection shall not preclude any remedy available under State or Federal law.

(f) The district courts of the United States shall have jurisdiction of proceedings instituted pursuant to this section and shall exercise the same without regard to whether a person asserting rights under the provisions of this Act shall have exhausted any administrative or other remedies that may be provided by law.

SEC. 13. Listing procedures shall be terminated in any political subdivision of any State (a) with respect to examiners appointed pursuant to clause (b) of section 6 whenever the Attorney General notifies the Civil Service Commission, or whenever the District Court for the District of Columbia determines in an action for declaratory judgment brought by any political subdivision with respect to which the Director of the Census has determined that more than 50 per centum of the nonwhite persons of voting age residing therein are registered to vote, (1) that all persons listed by an examiner for such subdivision have been placed on the appropriate voting registration roll, and (2) that there is no longer reasonable cause to believe that persons will be deprived of or denied the right to vote on account of race or color in such subdivision, and (b), with respect to examiners appointed pursuant to section 3 (a), upon order of the authorizing court. A political subdivision may petition the Attorney General for the termination of listing procedures under clause (a) of this section, and may petition the Attorney General to request the Director of the Census to take such survey or census as may be appropriate for the making of the determination provided for in this section. The District Court for the District of Columbia shall have jurisdiction to require such survey or census to be made by the Director of the Census and it shall require him to do so if it deems the Attorney

General's refusal to request such survey or census to be arbitrary or unreasonable.

SEC. 14. (a) All cases of criminal contempt arising under the provisions of this Act shall be governed by section 151 of the Civil Rights Act of 1957 (42 U. S. C. 1995).

(b) No court other than the District Court for the District of Columbia or a court of appeals in any proceeding under section 9 shall have jurisdiction to issue any declaratory judgment pursuant to section 4 or section 5 or any restraining order or temporary or permanent injunction against the execution or enforcement of any provision of this Act or any action of any Federal officer or employee pursuant hereto.

(c) (1) The terms "vote" or "voting" shall include all action necessary to make a vote effective in any primary, special, or general election, including, but not limited to, registration, listing pursuant to this Act, or other action required by law prerequisite to voting, casting a ballot, and having such ballot counted properly and included in the appropriate totals of votes cast with respect to candidates for public or party office and propositions for which votes are received in an election.

(2) The term "political subdivision" shall mean any county or parish, except that where registration for voting is not conducted under the supervision of a county or parish, the term shall include any other subdivision of a State which conducts registration for voting.

(d) In any action for a declaratory judgment brought pursuant to section 4 or section 5 of this Act, subpenas for witnesses who are required to attend the District Court for the District of Columbia may be served in any judicial district of the United States: *Provided,* That no writ of subpena shall issue for witnesses without the District of Columbia at a greater distance than one hun-

dred miles from the place of holding court without the permission of the District Court for the District of Columbia being first had upon proper application and cause shown.

SEC. 15. Section 2004 of the Revised Statutes (42 U. S. C. 1971), as amended by section 131 of the Civil Rights Act of 1957 (71 Stat. 637), and amended by section 601 of the Civil Rights Act of 1960 (74 Stat. 90), and as further amended by section 101 of the Civil Rights Act of 1964 (78 Stat. 241), is further amended as follows:

(a) Delete the word "Federal" wherever it appears in subsections (a) and (c);

(b) Repeal subsection (f) and designate the present subsections (g) and (h) as (f) and (g), respectively.

SEC. 16. The Attorney General and the Secretary of Defense, jointly, shall make a full and complete study to determine whether, under the laws or practices of any State or States, there are preconditions to voting, which might tend to result in discrimination against citizens serving in the Armed Forces of the United States seeking to vote. Such officials shall, jointly, make a report to the Congress not later than June 30, 1966, containing the results of such study, together with a list of any States in which such preconditions exist, and shall include in such report such recommendations for legislation as they deem advisable to prevent discrimination in voting against citizens serving in the Armed Forces of the United States.

SEC. 17. Nothing in this Act shall be construed to deny, impair, or otherwise adversely affect the right to vote of any person registered to vote under the law of any State or political subdivision.

SEC. 18. There are hereby authorized to be appropriated such sums as are necessary to carry out the provisions of this Act.

SEC. 19. If any provision of this Act or the application thereof to any person or circumstances is held invalid, the remainder of the Act and the application of the provision to other persons not similarly situated or to other circumstances shall not be affected thereby.

Approved August 6, 1965.

MR. JUSTICE BLACK, concurring and dissenting.

I agree with substantially all of the Court's opinion sustaining the power of Congress under § 2 of the Fifteenth Amendment to suspend state literacy tests and similar voting qualifications and to authorize the Attorney General to secure the appointment of federal examiners to register qualified voters in various sections of the country. Section 1 of the Fifteenth Amendment provides that "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude." In addition to this unequivocal command to the States and the Federal Government that no citizen shall have his right to vote denied or abridged because of race or color, § 2 of the Amendment unmistakably gives Congress specific power to go further and pass appropriate legislation to protect this right to vote against any method of abridgment no matter how subtle. Compare my dissenting opinion in *Bell* v. *Maryland,* 378 U. S. 226, 318. I have no doubt whatever as to the power of Congress under § 2 to enact the provisions of the Voting Rights Act of 1965 dealing with the suspension of state voting tests that have been used as notorious means to deny and abridge voting rights on racial grounds. This same congressional power necessarily exists to authorize appointment of federal examiners. I also agree with the judgment of the Court upholding § 4 (b) of

the Act which sets out a formula for determining when and where the major remedial sections of the Act take effect. I reach this conclusion, however, for a somewhat different reason than that stated by the Court, which is that "the coverage formula is rational in both practice and theory." I do not base my conclusion on the fact that the formula is rational, for it is enough for me that Congress by creating this formula has merely exercised its hitherto unquestioned and undisputed power to decide when, where, and upon what conditions its laws shall go into effect. By stating in specific detail that the major remedial sections of the Act are to be applied in areas where certain conditions exist, and by granting the Attorney General and the Director of the Census unreviewable power to make the mechanical determination of which areas come within the formula of § 4 (b), I believe that Congress has acted within its established power to set out preconditions upon which the Act is to go into effect. See, *e. g.*, *Martin* v. *Mott*, 12 Wheat. 19; *United States* v. *Bush & Co.*, 310 U. S. 371; *Hirabayashi* v. *United States*, 320 U. S. 81.

Though, as I have said, I agree with most of the Court's conclusions, I dissent from its holding that every part of § 5 of the Act is constitutional. Section 4 (a), to which § 5 is linked, suspends for five years all literacy tests and similar devices in those States coming within the formula of § 4 (b). Section 5 goes on to provide that a State covered by § 4 (b) can in no way amend its constitution or laws relating to voting without first trying to persuade the Attorney General of the United States or the Federal District Court for the District of Columbia that the new proposed laws do not have the purpose and will not have the effect of denying the right to vote to citizens on account of their race or color. I think this section is unconstitutional on at least two grounds.

(a) The Constitution gives federal courts jurisdiction over cases and controversies only. If it can be said that any case or controversy arises under this section which gives the District Court for the District of Columbia jurisdiction to approve or reject state laws or constitutional amendments, then the case or controversy must be between a State and the United States Government. But it is hard for me to believe that a justiciable controversy can arise in the constitutional sense from a desire by the United States Government or some of its officials to determine in advance what legislative provisions a State may enact or what constitutional amendments it may adopt. If this dispute between the Federal Government and the States amounts to a case or controversy it is a far cry from the traditional constitutional notion of a case or controversy as a dispute over the meaning of enforceable laws or the manner in which they are applied. And if by this section Congress has created a case or controversy, and I do not believe it has, then it seems to me that the most appropriate judicial forum for settling these important questions is this Court acting under its original Art. III, § 2, jurisdiction to try cases in which a State is a party.[1] At least a trial in this Court would treat the States with the dignity to which they should be entitled as constituent members of our Federal Union.

The form of words and the manipulation of presumptions used in § 5 to create the illusion of a case or controversy should not be allowed to cloud the effect of that section. By requiring a State to ask a federal court to approve the validity of a proposed law which has in no way become operative, Congress has asked the State to

[1] If § 14 (b) of the Act by stating that no court other than the District Court for the District of Columbia shall issue a judgment under § 5 is an attempt to limit the constitutionally created original jurisdiction of this Court, then I think that section is also unconstitutional.

secure precisely the type of advisory opinion our Constitution forbids. As I have pointed out elsewhere, see my dissenting opinion in *Griswold* v. *Connecticut,* 381 U. S. 479, 507, n. 6, pp. 513–515, some of those drafting our Constitution wanted to give the federal courts the power to issue advisory opinions and propose new laws to the legislative body. These suggestions were rejected. We should likewise reject any attempt by Congress to flout constitutional limitations by authorizing federal courts to render advisory opinions when there is no case or controversy before them. Congress has ample power to protect the rights of citizens to vote without resorting to the unnecessarily circuitous, indirect and unconstitutional route it has adopted in this section.

(b) My second and more basic objection to § 5 is that Congress has here exercised its power under § 2 of the Fifteenth Amendment through the adoption of means that conflict with the most basic principles of the Constitution. As the Court says the limitations of the power granted under § 2 are the same as the limitations imposed on the exercise of any of the powers expressly granted Congress by the Constitution. The classic formulation of these constitutional limitations was stated by Chief Justice Marshall when he said in *McCulloch* v. *Maryland,* 4 Wheat. 316, 421, "Let the end be legitimate, let it be within the scope of the constitution, and all means which are appropriate, which are plainly adapted to that end, *which are not prohibited, but consist with the letter and spirit of the constitution,* are constitutional." (Emphasis added.) Section 5, by providing that some of the States cannot pass state laws or adopt state constitutional amendments without first being compelled to beg federal authorities to approve their policies, so distorts our constitutional structure of government as to render any distinction drawn in the Constitution between state and federal power almost meaningless. One

of the most basic premises upon which our structure of government was founded was that the Federal Government was to have certain specific and limited powers and no others, and all other power was to be reserved either "to the States respectively, or to the people." Certainly if all the provisions of our Constitution which limit the power of the Federal Government and reserve other power to the States are to mean anything, they mean at least that the States have power to pass laws and amend their constitutions without first sending their officials hundreds of miles away to beg federal authorities to approve them.[2] Moreover, it seems to me that § 5 which gives federal officials power to veto state laws they do not like is in direct conflict with the clear command of our Constitution that "The United States shall guarantee to every State in this Union a Republican Form of Government." I cannot help but believe that the inevitable effect of any such law which forces any one of the States to entreat federal authorities in far-away places for approval of local laws before they can become effective is to

[2] The requirement that States come to Washington to have their laws judged is reminiscent of the deeply resented practices used by the English crown in dealing with the American colonies. One of the abuses complained of most bitterly was the King's practice of holding legislative and judicial proceedings in inconvenient and distant places. The signers of the Declaration of Independence protested that the King "has called together legislative bodies at places unusual, uncomfortable, and distant from the depository of their public Records, for the sole purpose of fatiguing them into compliance with his measures," and they objected to the King's "transporting us beyond Seas to be tried for pretended offences." These abuses were fresh in the minds of the Framers of our Constitution and in part caused them to include in Art. 3, § 2, the provision that criminal trials "shall be held in the State where the said Crimes shall have been committed." Also included in the Sixth Amendment was the requirement that a defendant in a criminal prosecution be tried by a "jury of the State and district wherein the crime shall have been committed, which district shall have been previously asce tained by law."

create the impression that the State or States treated in this way are little more than conquered provinces. And if one law concerning voting can make the States plead for this approval by a distant federal court or the United States Attorney General, other laws on different subjects can force the States to seek the advance approval not only of the Attorney General but of the President himself or any other chosen members of his staff. It is inconceivable to me that such a radical degradation of state power was intended in any of the provisions of our Constitution or its Amendments. Of course I do not mean to cast any doubt whatever upon the indisputable power of the Federal Government to invalidate a state law once enacted and operative on the ground that it intrudes into the area of supreme federal power. But the Federal Government has heretofore always been content to exercise this power to protect federal supremacy by authorizing its agents to bring lawsuits against state officials once an operative state law has created an actual case and controversy. A federal law which assumes the power to compel the States to submit in advance any proposed legislation they have for approval by federal agents approaches dangerously near to wiping the States out as useful and effective units in the government of our country. I cannot agree to any constitutional interpretation that leads inevitably to such a result.

I see no reason to read into the Constitution meanings it did not have when it was adopted and which have not been put into it since. The proceedings of the original Constitutional Convention show beyond all doubt that the power to veto or negative state laws was denied Congress. On several occasions proposals were submitted to the convention to grant this power to Congress. These proposals were debated extensively and on every occasion when submitted for vote they were overwhelmingly re-

jected.[3] The refusal to give Congress this extraordinary power to veto state laws was based on the belief that if such power resided in Congress the States would be helpless to function as effective governments.[4] Since that time neither the Fifteenth Amendment nor any other Amendment to the Constitution has given the slightest indication of a purpose to grant Congress the power to veto state laws either by itself or its agents. Nor does any provision in the Constitution endow the federal courts with power to participate with state legislative bodies in determining what state policies shall be enacted into law. The judicial power to invalidate a law in a case or controversy after the law has become effective is a long way from the power to prevent a State from passing a law. I cannot agree with the Court that Congress—denied a power in itself to veto a state law—can delegate this same power to the Attorney General or the District Court for the District of Columbia. For the effect on the States is the same in both cases—they cannot pass their laws without sending their agents to the City of Washington to plead to federal officials for their advance approval.

In this and other prior Acts Congress has quite properly vested the Attorney General with extremely broad power to protect voting rights of citizens against discrimination on account of race or color. Section 5 viewed in this context is of very minor importance and in my judgment is likely to serve more as an irritant to

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[3] See Debates in the Federal Convention of 1787 as reported by James Madison in Documents Illustrative of the Formation of the Union of the American States (1927), pp. 605, 789, 856.

[4] One speaker expressing what seemed to be the prevailing opinion of the delegates said of the proposal, "Will any State ever agree to be bound hand & foot in this manner. It is worse than making mere corporations of them . . . ." *Id.*, at 604.

the States than as an aid to the enforcement of the Act. I would hold § 5 invalid for the reasons stated above with full confidence that the Attorney General has ample power to give vigorous, expeditious and effective protection to the voting rights of all citizens.[5]

[5] Section 19 of the Act provides as follows:

"If any provision of this Act or the application thereof to any person or circumstances is held invalid, the remainder of the Act and the application of the provision to other persons not similarly situated or to other circumstances shall not be affected thereby."

The State of Louisiana

Literacy Test (This test is to be given to anyone who cannot prove a fifth grade education.)

Do what you are told to do in each statement, nothing more, nothing less. Be careful as one wrong answer denotes failure of the test. You have 10 minutes to complete the test.

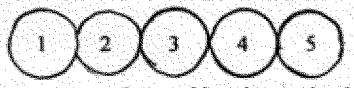
1. Draw a line around the number or letter of this sentence.
2. Draw a line under the last word in this line.
3. Cross out the longest word in this line.
4. Draw a line around the shortest word in this line.
5. Circle the first, first letter of the alphabet in this line.
6. In the space below draw three circles, one inside (engulfed by) the other.
7. Above the letter X make a small cross.
8. Draw a line through the letter below that comes earliest in the alphabet.

Z V S B D M K I T P H C

9. Draw a line through the two letters below that come last in the alphabet.

Z V B D M K T P H S Y C

10. In the first circle below write the last letter of the first word beginning with "L".



11. Cross out the number necessary, when making the number below one million.

10000000000

12. Draw a line from circle 2 to circle 5 that will pass below circle 2 and above circle 4.



13. In the line below cross out each number that is more than 20 but less than 30.

31 16 48 29 53 47 22 37 98 26 20 25

14. Draw a line under the first letter after "h" and draw a line through the second letter after "j".

a b c d e f g h i j k l m n o p q

15. In the space below, write the word "noise" backwards and place a dot over what would be its second letter should it have been written forward.

16. Draw a triangle with a blackened circle that overlaps only its left corner.

17. Look at the line of numbers below, and place on the blank, the number that should come next.

2 4 8 16 ____

18. Look at the line of numbers below, and place on the blank, the number that should come next.

3 6 9 ____ 15

19. Draw in the space below, a square with a triangle in it, and within that same triangle draw a circle with a black dot in it.

20. Spell backwards, forwards.

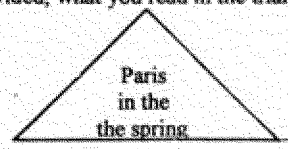
21. Print the word vote upside down, but in the correct order.

22. Place a cross over the tenth letter in this line, a line under the first space in this sentence, and circle around the last the in the second line of this sentence.

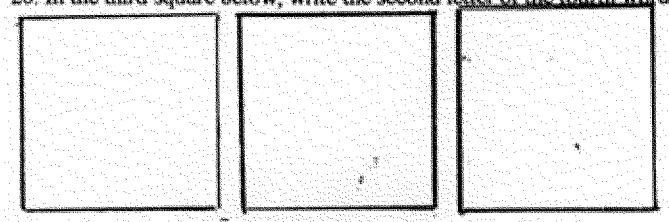
23. Draw a figure that is square in shape. Divide it in half by drawing a straight line from its northeast corner to its southwest corner, and then divide it once more by drawing a broken line from the middle of its western side to the middle of its eastern side.

24. Print a word that looks the same whether it is printed frontwards or backwards.

25. Write down on the line provided, what you read in the triangle below:



26. In the third square below, write the second letter of the fourth word.



27. Write right from the left to the right as you see it spelled here.

28. Divide a vertical line in two equal parts by bisecting it with a curved horizontal line that is only straight at its spot bisection of the vertical.

29. Write every other word in this first line and print every third word in same line, (original type smaller and first line ended at comma) but capitalize the fifth word that you write.

30. Draw five circles that one common inter-locking part.

Maine Senate Votes Repeal Of Poll Tax on Adult Males

Special to The New York Times

AUGUSTA, Me., March 12—The Maine Senate today gave final approval, 26 to 2, to a bill that would repeal the $3 poll tax on adult males, a law that has been on the books since 1845.

The poll tax produced annual revenues of nearly $700,000. Proof of payment is a prerequisite for obtaining state driver's, fishing or hunting licenses, but those who do not pay cannot be barred from voting.

Gov. Kenneth M. Curtis is expected to sign the bill tomorrow.

The New York Times
Published: March 13, 1973
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LITERACY TESTS FOR VOTING.

The people of this State by the adoption of a constitutional amendment in 1921 made ability to read and write English a condition of voting. This having been done, it became necessary to provide for a way of determining the literacy of those desiring to vote. It was a natural course to leave this duty to the officers of election. Following the example of several other States, a statute was enacted last year prescribing that this test should be made by requiring the would-be voter to read an extract from the Constitution of the State, drawn by lot, and to write some of the words selected from the extract. The law is so worded, however, as to suggest, if literally interpreted, that the ability of the inspector of elections to understand the candidate is to be tested; for the new voter is to read aloud "intelligibly" the chance passage. It might easily happen that a candidate could read "intelligibly" to one of his own racial origin, who could not make himself intelligible to one of another racial or political background. However this may be, the test should be given by those whose business it is to know the language, who have had experience in teaching it and who know how to give tests in English.

Fortunately, in this State the machinery for such a test is already in existence, or at any rate can without great expense or difficulty be extended, to provide for drawing on the literacy of new voters and to grant certificates which the officials of election may confidently rely upon. It is the educational examination system of the State. There is an added reason for asking the teachers of the State to perform this important office, which ought not to be discharged lightly or incompetently or unequally over the State. No man or woman of foreign birth should attain the franchise without coming into touch with those who teach our children and youth of native birth. They are the best exponents, taking them as a body, of the institutions and ideals of our republic.

The statute of last year made optional the acceptance by the election officials of certificates of literacy issued by the educational authorities and based upon examinations prescribed under regulations of the State Board of Regents. The law should be amended not only to make their acceptance mandatory, but also to make this the only literacy test by which one can come into the franchise. The teachers in our schools to whose care two millions of our children are entrusted and through whose tuition these children develop and prepare for citizenship are the logical as well as the most competent and dependable persons to advise the foreign-born on their way to this same goal. The bill making this provision has been reported out of the Judiciary Committee and should be reached on the calendar by tomorrow or next day. Its passage should be urged by all who are interested in the realization of that for which the constitutional amendment in regard to literacy was adopted by the people of this State.

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Published: April 17, 1923
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CONSTITUTION

OF THE

State of South Carolina,

RATIFIED

IN

CONVENTION,

DECEMBER 4, 1895.

ABBEVILLE, S. C.:
HUGH WILSON, PRINTER.
1900.

CONSTITUTION

OF THE

State of South Carolina.

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The State of South Carolina:

At a Convention of the People of the State of South Carolina, begun and holden at Columbia, on the Tenth day of September, in the year of our Lord one thousand eight hundred and ninety-five, and thence continued by divers adjournments to the Fourth day of December, in the year of our Lord one thousand eight hundred and ninety-five.

CONSTITUTION

OF THE

STATE OF SOUTH CAROLINA.

Preamble. We, the people of the State of South Carolina, in Convention assembled, grateful to God for our liberties, do ordain and establish this Constitution for the preservation and perpetuation of the same.

ARTICLE I.

DECLARATION OF RIGHTS.

SECTION 1. All political power is vested in and derived from the people only, therefore they have the right at all times to modify their form of government. Political power in people.

SECTION 2. Representation in the House of Representatives shall be apportioned according to population. Apportionment Representatives.

SECTION 3. The General Assembly ought frequently to assemble for the redress of grievances and for making new laws, as the common good may require. Meeting General Assembly

SECTION 4. The General Assembly shall make no law respecting an establishment of religion or prohibiting the free exercise thereof, or abridging the freedom of speech or of the press; or the right of the people peaceably to assemble and to petition the Government or any department thereof for a redress of grievances. Religious worship. Freedom of speech. Petition.

SECTION 5. The privileges and immunities of citizens of this State and of the United States under this Constitution shall not be abridged, nor shall any person be deprived of life, liberty or property without due process of law, nor shall any person be denied the equal protection of the laws. Privileges and immunities. Protection of laws.

SECTION 6. All property subject to taxation shall be taxed in proportion to its value. Taxation.

SECTION 7. No tax, subsidy, charge, impost tax or duties shall be established, fixed, laid or levied, under any pretext whatsoever, without the consent of the people or their representatives lawfully assembled. No tax without consent.

SECTION 8. No bill of attainder, *ex post facto* law, law impairing the obligation of contracts, nor law granting any title of nobility or hereditary emolument, shall be passed, and no conviction shall work corruption of blood or forfeiture of estate. Attainder—*ex post facto* law.

SECTION 9. The right of suffrage, as regulated in this Constitution, shall be protected by law regulating elections and prohibiting, under adequate penalties, all undue influences from power, bribery, tumult or improper conduct. Suffrage.

SECTION 10. All elections shall be free and open, and every inhabitant of this State possessing the qualifications provided for in this Constitution shall have an equal right to elect officers and be elected to fill public office. Elections free and open.

SECTION 11. No property qualification, unless prescribed in this Constitution, shall be necessary for an election to or the holding of any office. No person shall be elected or appointed to office in this State for life or during good behavior, but the terms of all officers shall be for some specified period, except Notaries Public and officers in the militia. After the adoption of this Constitution any person who shall fight a duel or send or accept a chal- Property qualifications. Term of office. Dueling.

lenge for that purpose, or be an aider or abettor in fighting a duel, shall be deprived of holding any office of honor or trust in this State, and shall be otherwise punished as the law shall prescribe.

Residence. SECTION 12. Temporary absence from the State shall not forfeit a residence once obtained.

Suspension of laws. SECTION 13. The power of suspending the laws or the execution of the laws shall only be exercised by the General Assembly or by its authority in particular cases expressly provided for by it.

Departments separate. SECTION 14. In the government of this State the legislative, executive and judicial powers of the Government shall be forever separate and distinct from each other, and no person or persons exercising the functions of one of said departments shall assume or discharge the duties of any other.

Courts—remedy. SECTION 15. All Courts shall be public, and every person shall have speedy remedy therein for wrongs sustained.

Searches, seizures. SECTION 16. The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated, and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or thing to be seized.

SECTION 17. No person shall be held to answer for any crime where the punishment exceeds a fine of one hundred dollars or imprisonment for thirty days, with or without hard labor, unless

Presentment of grand jury. on a presentment or indictment of a grand jury of the County where the crime shall have been committed, except in cases arising in the land or naval forces or in the militia when in actual

Not tried twice. service in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or liberty, nor shall be compelled in any criminal case to be a witness against himself.

Private property. Private property shall not be taken for private use without the consent of the owner, nor for public use without just compensation being first made therefor.

Trial by jury. SECTION 18. In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial by an impartial jury; and to be fully informed of the nature and cause of the accusation;

Witnesses. to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to be fully heard in his defence by himself or by his counsel or by both.

Excessive bail SECTION 19. Excessive bail shall not be required, nor excessive

Corporal punishment. fines imposed, nor cruel and unusual punishments inflicted, nor shall witnesses be unreasonably detained. Corporal punishment

Contempt. shall not be inflicted. The power to punish for contempt shall not in any case extend to imprisonment in the State penitentiary.

Sureties. SECTION 20. All persons shall, before conviction, be bailable by sufficient sureties, except for capital offences when the proof is evident or the presumption great.

Libel. SECTION 21. In all indictments or prosecutions for libel, the

truth of the alleged libel may be given in evidence, and the jury shall be the judges of the law and the facts.

Treason.

SECTION 22. Treason against the State shall consist alone in levying war or in giving aid and comfort to enemies against the State. No person shall be held guilty of treason, except upon testimony of at least two witnesses to the same overt act, or upon confession in open Court.

Habeas corpus.

SECTION 23. The privilege of the writ of *habeas corpus* shall not be suspended unless when, in case of insurrection, rebellion or invasion, the public safety may require it.

Imprisonment for debt.

SECTION 24. No person shall be imprisoned for debt except in cases of fraud.

Trial by jury.

SECTION 25. The right of trial by jury shall be preserved inviolate.

Keep and bear arms.

General Assembly may maintain armies.

Soldier, how quartered.

SECTION 26. A well regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed. As in times of peace armies are dangerous to liberty, they shall not be maintained without the consent of the General Assembly. The military power of the State shall always be held in subordination to the civil authority and be governed by it. No soldier shall in time of peace be quartered in any house without the consent of the owner, nor in time of war but in the manner to be prescribed by law.

Martial law.

SECTION 27. No person shall in any case be subject to Martial law or to any pains or penalties by virtue of that law, except those employed in the army and navy of the United States, and except the militia in actual service, but by the authority of the General Assembly.

Navigable waters free.

No tax for use of wharf.

SECTION 28. All navigable waters shall forever remain public highways free to the citizens of the State and the United States without tax, impost or toll imposed; and no tax, toll, impost or wharfage shall be imposed, demanded or received from the owners of any merchandise or commodity for the use of the shores or any wharf erected on the shores or in or over the waters of any navigable stream unless the same be authorized by the General Assembly.

Provisions of Constitution.

SECTION 29. The provisions of the Constitution shall be taken, deemed and construed to be mandatory and prohibitory, and not merely directory, except where expressly made directory or permissory by its own terms.

ARTICLE II.

RIGHT OF SUFFRAGE.

Elections by ballot.

SECTION 1. All elections by the people shall be by ballot, and elections shall never be held or the ballots counted in secret.

Qualification for office.

SECTION 2. Every qualified elector shall be eligible to any office to be voted for, unless disqualified by age, as prescribed in this Constitution. But no person shall hold two offices of honor or profit at the same time: *Provided*, That any person holding another office may at the same time be an officer in the militia or a Notary Public.

Two offices.

Electors.

SECTION 3. Every male citizen of this State and of the United States twenty-one years of age and upwards, not laboring under the disabilities named in this Constitution and possessing the qualifications required by it, shall be an elector.

SECTION 4. The qualifications for suffrage shall be as follows:

Residence.

(*a*) Residence in the State for two years, in the County one year, in the polling precinct in which the elector offers to vote four months, and the payment six months before any election of any poll tax then due and payable: *Provided*, That ministers in charge of an organized church and teachers of public schools shall be entitled to vote after six months' residence in the State, otherwise qualified.

Registration.

(*b*) Registration, which shall provide for the enrollment of every elector once in ten years, and also an enrollment during each and every year of every elector not previously registered under the provisions of this Article.

Qualification for registration up to January, 1898.

(*c*) Up to January 1st, 1898, all male persons of voting age applying for registration who can read any Section in this Constitution submitted to them by the registration officer, or understand and explain it when read to them by the registration officer, shall be entitled to register and become electors. A separate record of all persons registered before January 1st, 1898, sworn to by the registration officer, shall be filed, one copy with the Clerk of Court and one in the office of the Secretary of State, on or before February 1st, 1898, and such persons shall remain during life qualified electors unless disqualified by the other provisions of this Article. The certificate of the Clerk of Court or Secretary of State shall be sufficient evidence to establish the right of said citizens to any subsequent registration and the franchise under the limitations herein imposed.

List of registered voters.

Qualification for registration after January, 1898.

(*d*) Any person who shall apply for registration after January 1st, 1898, if otherwise qualified, shall be registered: *Provided*, That he can both read and write any Section of this Constitution submitted to him by the registration officer or can show that he owns, and has paid all taxes collectible during the previous year on property in this State assessed at three hundred dollars ($300) or more.

Payment of taxes necessary for voting

(*e*) Managers of election shall require of every elector offering to vote at any election, before allowing him to vote, proof of the payment of all taxes, including poll tax, assessed against him and collectible during the previous year. The production of a cer-

tificate or of the receipt of the officer authorized to collect such taxes shall be conclusive proof of the payment thereof.

(*f*) The General Assembly shall provide for issuing to each duly registered elector a certificate of registration, and shall provide for the renewal of such certificate when lost, mutilated or destroyed, if the applicant is still a qualified elector under the provisions of this Constitution, or if he has been registered as provided in subsection (*e*). Certificate of registration.

SECTION 5. Any person denied registration shall have the right to appeal to the Court of Common Pleas, or any Judge thereof, and thence to the Supreme Court, to determine his right to vote under the limitations imposed in this Article, and on such appeal the hearing shall be *de novo*, and the General Assembly shall provide by law for such appeal, and for the correction of illegal and fraudulent registration, voting, and all other crimes against the election laws. Appeal. Crimes against election laws.

SECTION 6. The following persons are disqualified from being registered or voting:

First, Persons convicted of burglary, arson, obtaining goods or money under false pretenses, perjury, forgery, robbery, bribery, adultery, bigamy, wife-beating, house-breaking, receiving stolen goods, breach of trust with fraudulent intent, fornication, sodomy, incest, assault with intent to ravish, miscegenation, larceny, or crimes against the election laws: *Provided*, That the pardon of the Governor shall remove such disqualification. Persons disqualified from voting.

Second, Persons who are idiots, insane, paupers supported at the public expense, and persons confined in any public prison.

SECTION 7. For the purpose of voting, no person shall be deemed to have gained or lost a residence by reason of his presence or absence while employed in the service of the United States, nor while engaged in the navigation of the waters of this State, or of the United States, or of the high seas, nor while a student of any institution of learning. Residence gained or lost.

SECTION 8. The General Assembly shall provide by law for the registration of all qualified electors, and shall prescribe the manner of holding elections and of ascertaining the results of the same: *Provided*, At the first registration under this Constitution, and until the first of January, 1898, the registration shall be conducted by a Board of three discreet persons in each County, to be appointed by the Governor, by and with the advice and consent of the Senate. For the first registration to be provided for under this Constitution, the registration books shall be kept open for at least six consecutive weeks; and thereafter from time to time at least one week in each month, up to thirty days next preceding the first election to be held under this Constitution. The registration books shall be public records open to the inspection of any citizen at all times. Registration provided. Elections. Board of registration. Books of registration.

Polling precincts.

SECTION 9. The General Assembly shall provide for the establishment of polling precincts in the several Counties of the State, and those now existing shall so continue until abolished or changed. Each elector shall be required to vote at his own precinct, but provision shall be made for his transfer to another precinct upon his change of residence.

Primary elections.

SECTION 10. The General Assembly shall provide by law for the regulation of party primary elections and punishing fraud at the same.

Closing books of registration.

SECTION 11. The registration books shall close at least thirty days before an election, during which time transfers and registration shall not be legal: *Provided*, Persons who will become of age during that period shall be entitled to registration before the books are closed.

Municipal elections.

SECTION 12. Electors in municipal elections shall possess the qualifications and be subject to the disqualifications herein prescribed. The production of a certificate of registration from the registration officers of the County as an elector at a precinct included in the incorporated city or town in which the voter desires to vote is declared a condition prerequisite to his obtaining a certificate of registration for municipal elections, and in addition he must have been a resident within the corporate limits at least four months before the election and have paid all taxes due and collectible for the preceding fiscal year. The General Assembly shall provide for the registration of all voters before each election in municipalities: *Provided*, That nothing herein contained shall apply to any municipal elections which may be held prior to the general election of the year 1896.

Registration in.

Bonded debt in municipalities.

SECTION 13. In authorizing a special election in any incorporated city or town in this State for the purpose of bonding the same, the General Assembly shall prescribe as a condition precedent to the holding of said election a petition from a majority of the freeholders of said city or town as shown by its tax books, and at such elections all electors of such city or town who are duly qualified for voting under Section 12 of this Article, and who have paid all taxes, State, County and municipal, for the previous year, shall be allowed to vote; and the vote of a majority of those voting in said election shall be necessary to authorize the issue of said bonds.

Arrests of electors.

SECTION 14. Electors shall in all cases except treason, felony, or a breach of the peace, be privileged from arrest on the days of election during their attendance at the polls, and going to and returning therefrom.

Right of suffrage free.

SECTION 15. No power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage in this State.

ARTICLE III.

LEGISLATIVE DEPARTMENT.

Legislative power.

SECTION 1. The legislative power of this State shall be vested in two distinct branches, the one to be styled the "Senate" and the other the "House of Representatives," and both together the "General Assembly of the State of South Carolina."

House of Representatives.

SECTION 2. The House of Representatives shall be composed of members chosen by ballot every second year by citizens of this State, qualified as in this Constitution is provided.

Number of members.

SECTION 3. The House of Representatives shall consist of one hundred and twenty-four members, to be apportioned among the several Counties according to the number of inhabitants contained in each. Each County shall constitute one Election District. An enumeration of the inhabitants for this purpose shall be made in the year nineteen hundred and one, and shall be made in the course of every tenth year thereafter, in such manner as shall be by law directed: *Provided*, That the General Assembly may at any time, in its discretion, adopt the immediately preceding United States Census as a true and correct enumeration of the inhabitants of the several Counties, and make the apportionment of Representatives among the several Counties according to said enumeration: *Provided, further*, That until the apportionment which shall be made upon the next enumeration shall take effect, the representation of the several Counties as they now exist (including the County of Saluda established by ordinance) shall be as follows: Abbeville, 5; Aiken, 3; Anderson, 5; Barnwell, 5; Beaufort, 4; Berkeley, 4; Charleston, 9; Chester, 3; Chesterfield, 2; Clarendon, 3; Colleton, 4; Darlington, 3; Edgefield, 3; Fairfield, 3; Florence, 3; Georgetown, 2; Greenville, 5; Hampton, 2; Horry, 2; Kershaw, 2; Lancaster, 2; Laurens, 3; Lexington, 2; Marion, 3; Marlboro, 3; Newberry, 3; Oconee, 2; Orangeburg, 5; Pickens, 2; Richland, 4; Saluda, 2; Spartanburg, 6; Sumter, 5; Union, 3; Williamsburg, 3; York, 4: *Provided, further*, That in the event other Counties are hereafter established, then the General Assembly shall reapportion the Representatives between the Counties.

Enumeration of inhabitants.

Apportionment.

Assignment of Representatives.

SECTION 4. In assigning Representatives to the several Counties, the General Assembly shall allow one Representative to every one hundred and twenty-fourth part of the whole number of inhabitants in the State: *Provided*, That if in the apportionment of Representatives any County shall appear not to be entitled, from its population, to a Representative, such County shall, nevertheless, send one Representative; and if there be still a deficiency in the number of Representatives required by Section third of this Article, such deficiency shall be supplied by assign-

ing Representatives to those Counties having the largest surplus fractions.

Apportionment takes effect.

SECTION 5. No apportionment of Representatives shall take effect until the general election which shall succeed such apportionment.

Senate.

SECTION 6. The Senate shall be composed of one member from each County, to be elected for the term of four years by the qualified electors in each County, in the same manner in which members of the House of Representatives are chosen.

Qualification of Senators and members of House.

SECTION 7. No person shall be eligible to a seat in the Senate or House of Representatives who, at the time of his election, is not a duly qualified elector under this Constitution in the County in which he may be chosen. Senators shall be at least twenty-five and Representatives at least twenty-one years of age.

Election of Senators and Representatives.

SECTION 8. The first election for members of the House of Representatives under this Constitution shall be held on Tuesday after the first Monday in November, eighteen hundred and ninety-six, and in every second year thereafter, in such manner and at such places as the General Assembly may prescribe; and the first election for Senators shall be held on Tuesday after the first Monday in November, eighteen hundred and ninety-six, and every fourth year thereafter, except in Counties in which there was an election for Senator in eighteen hundred and ninety-four for a full term, in which Counties no election for Senator shall be held until the general election to be held in eighteen hundred and ninety-eight, and every fourth year thereafter, except to fill vacancies. Senators shall be so classified that one-half of their number, as nearly as practicable, shall be chosen every two years. Whenever the General Assembly shall establish more than one County at any session, it shall so prescribe the first term of the Senators from such Counties as to observe such classification.

Classification of Senators.

Sessions General Assembly.

SECTION 9. The annual session of the General Assembly heretofore elected, fixed by the Constitution of the year eighteen hundred and sixty-eight to convene on the fourth Tuesday of November, in the year eighteen hundred and ninety-five, is hereby postponed, and the same shall be convened and held in the city of Columbia on the second Tuesday of January, in the year eighteen hundred and ninety-six. The first session of the General Assembly elected under this Constitution shall convene in Columbia on the second Tuesday in January, in the year eighteen hundred and ninety-seven, and thereafter annually at the same time and place. Should the casualties of war or contagious disease render it unsafe to meet at the seat of government, then the Governor may, by proclamation, appoint a more secure and convenient place of meeting. Members of the General Assembly shall not receive any compensation for more than forty days of any one session:

Compensation of members of.

Provided, That this limitation shall not effect the first four sessions of the General Assembly under this Constitution.

Terms of office.

SECTION 10. The terms of office of the Senators and Representatives chosen at a general election shall begin on the Monday following such election.

Election returns.

SECTION 11. Each house shall judge of the election returns and qualifications of its own members, and a majority of each house shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may compel the attendance of absent members, in such manner and under such penalties as may be provided by law or rule.

Quorum.

Absent members.

Officers.

SECTION 12. Each house shall choose its own officers, determine its rules of procedure, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member, but not a second time for the same cause.

Rules.

Expulsion.

Right of punishment.

SECTION 13. Each house may punish by imprisonment during its sitting any person not a member who shall be guilty of disrespect to the house by any disorderly or contemptuous behavior in its presence, or who, during the time of its sitting, shall threaten harm to the body or estate of any member for anything said or done in either house, or who shall assault any of them therefor, or who shall assault or arrest any witness or other person ordered to attend the house in his going thereto or returning therefrom, or who shall rescue any person arrested by order of the house: *Provided*, That such time of imprisonment shall not in any case extend beyond the session of the General Assembly.

Members protected.

SECTION 14. The members of both houses shall be protected in their persons and estates during their attendance on, going to and returning from the General Assembly, and ten days previous to the sitting and ten days after the adjournment thereof. But these privileges shall not protect any member who shall be charged with treason, felony or breach of the peace.

Bills for revenue.

SECTION 15. Bills for raising revenue shall originate in the House of Representatives, but may be altered, amended or rejected by the Senate; all other Bills may originate in either house, and may be amended, altered or rejected by the other.

Other Bills.

Style of laws.

SECTION 16. The style of all laws shall be: "Be it enacted by the General Assembly of the State of South Carolina."

One subject.

SECTION 17. Every Act or resolution having the force of law shall relate to but one subject, and that shall be expressed in the title.

Formalities of Act.

SECTION 18. No Bill or Joint Resolution shall have the force of law until it shall have been read three times and on three several days in each house, has had the Great Seal of the State affixed to it, and has been signed by the President of the Senate and the Speaker of the House of Representatives: *Provided*, That either branch of the General Assembly may provide by rule for a first

and third reading of any Bill or Joint Resolution by its title only.

Mileage.

SECTION 19. Each member of the General Assembly shall receive five cents for every mile for ordinary route of travel in going to and returning from the place where its sessions are held; no General Assembly shall have the power to increase the per diem of its own members; and members of the General Assembly when convened in extra session shall receive the same compensation as is fixed by law for the regular session.

Increase of per diem.

Extra session.

Elections "*viva voce.*"

SECTION 20. In all elections by the General Assembly, or either house thereof, the members shall vote "*viva voce*," and their votes, thus given, shall be entered upon the journal of the house to which they respectively belong.

Adjournments

SECTION 21. Neither house, during the session of the General Assembly, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which it shall be at the time sitting.

Journal.

SECTION 22. Each house shall keep a journal of its own proceedings, and cause the same to be published immediately after its adjournment, excepting such parts as, in its judgment, may require secrecy; and the yeas and nays of the members of either house, on any question, shall, at the desire of ten members of the House or five members of the Senate, respectively, be entered on the journal. Any member of either house shall have liberty to dissent from and protest against any Act or resolution which he may think injurious to the public or to an individual, and have the reasons of his dissent entered on the journal.

"Yeas" and "nays."

Doors open.

SECTION 23. The doors of each house shall be open, except on such occasions as in the opinion of the House may require secrecy.

Holding two offices.

SECTION 24. No person shall be eligible to a seat in the General Assembly while he holds any office or position of profit or trust under this State, the United States of America, or any of them, or under any other power, except officers in the militia and Notaries Public; and if any member shall accept or exercise any of the said disqualifying offices or positions he shall vacate his seat.

Vacancies.

SECTION 25. If any election district shall neglect to choose a member or members on the day of election, or if any person chosen a member of either house shall refuse to qualify and take his seat, or shall resign, die, depart the State, accept any disqualifying office or position, or become otherwise disqualified to hold his seat, a writ of election shall be issued by the President of the Senate or Speaker of the House of Representatives, as the case may be, for the purpose of filling the vacancy thereby occasioned for the remainder of the term for which the person so refusing to qualify, resigning, dying, departing the State, or becoming disquali-

fied, was elected to serve, or the defaulting election district ought to have chosen a member or members.

SECTION 26. Members of the General Assembly, and all officers before they enter upon the duties of their respective offices, and all members of the bar, before they enter upon the practice of their profession, shall take and subscribe the following oath: "I do solemnly swear (or affirm) that I am duly qualified, according to the Constitution of this State, to exercise the duties of the office to which I have been elected, (or appointed,) and that I will, to the best of my ability, discharge the duties thereof, and preserve, protect, and defend the Constitution of this State and of the United States. I do further solemnly swear (or affirm) that I have not since the first day of January, in the year eighteen hundred and eighty-one, engaged in a duel as principal or second or otherwise; and that I will not, during the term of office to which I have been elected (or appointed) engage in a duel as principal or second or otherwise. So help me God." Oath of office.

SECTION 27. Officers shall be removed for incapacity, misconduct or neglect of duty, in such manner as may be provided by law, when no mode of trial or removal is provided in this Constitution. Removal of officer.

SECTION 28. The General Assembly shall enact such laws as will exempt from attachment, levy and sale under any mesne or final process issued from any Court, to the head of any family residing in this State, a homestead in lands, whether held in fee or any lesser estate, to the value of one thousand dollars, or so much thereof as the property is worth if its value is less than one thousand dollars, with the yearly products thereof, and to every head of a family residing in this State, whether entitled to a homestead exemption in lands or not, personal property to the value of five hundred dollars, or so much thereof as the property is worth if its value is less than five hundred dollars. The title to the homestead to be set off and assigned shall be absolute and be forever discharged from all debts of the said debtor then existing or thereafter contracted except as hereinafter provided: *Provided*, That in case any woman having a separate estate shall be married to the head of a family who has not of his own sufficient property to constitute a homestead as hereinbefore provided, said married woman shall be entitled to a like exemption as provided for the head of a family: *Provided, further*, That there shall not be an allowance of more than one thousand dollars' worth of real estate and more than five hundred dollars' worth of personal property to the husband and wife jointly: *Provided, further*, That no property shall be exempt from attachment, levy or sale for taxes, or for payment of obligations contracted for the purchase of said homestead or personal property exemption or the erection or making of improvements or repairs thereon: *Provided, further*, That the yearly products of said homestead shall Homestead. Married woman's exemption. Taxes. Purchase money. Yearly products.

not be exempt from attachment, levy or sale for the payment of obligations contracted in the production of the same: *Provided, further*, That no waiver shall defeat the right of homestead before assignment except it be by deed of conveyance, or by mortgage, and only as against the mortgage debt; and no judgment creditor or other creditor whose lien does not bind the homestead shall have any right or equity to require that a lien which embraces the homestead and other property shall first exhaust the homestead: *Provided, further*, That after a homestead in lands has been set off and recorded the same shall not be waived by deed of conveyance, mortgage or otherwise, unless the same be executed by both husband and wife, if both be living: *Provided, further*, That any person not the head of a family shall be entitled to a like exemption as provided for the head of a family in all necessary wearing apparel and tools and implements of trade, not to exceed in value the sum of three hundred dollars.

Waiver.

Deed of husband and wife.

Exemption for single person.

Taxes laid upon actual value.

SECTION 29. All taxes upon property, real and personal, shall be laid upon the actual value of the property taxed, as the same shall be ascertained by an assessment made for the purpose of laying such tax.

Extra compensation not permitted.

SECTION 30. The General Assembly shall never grant extra compensation, fee or allowance to any public officer, agent, servant or contractor after service rendered, or contract made, nor authorize payment or part payment of any claim under any contract not authorized by law; but appropriations may be made for expenditures in repelling invasion, preventing or suppressing insurrection.

Appropriations for repelling invasion.

Public lands.

SECTION 31. Lands belonging to or under the control of the State shall never be donated, directly or indirectly, to private corporations or individuals, or to railroad companies. Nor shall such land be sold to corporations or associations, for a less price than that for which it can be sold to individuals. This, however, shall not prevent the General Assembly from granting a right of way, not exceeding one hundred and fifty feet in width, as a mere easement to railroads across State lands, nor to interfere with the discretion of the General Assembly in confirming the title to lands claimed to belong to the State, but used or possessed by other parties under an adverse claim.

Salary of deceased officer.

SECTION 32. The General Assembly shall not authorize payment to any person of the salary of a deceased officer beyond the date of his death; nor grant pensions except for military and navy service; nor retire any officer on pay or part pay.

Marriage of whites and negroes.

Sexual intercourse.

SECTION 33. The marriage of a white person with a negro or mulatto, or person who shall have one-eighth or more negro blood, shall be unlawful and void. No unmarried woman shall legally consent to sexual intercourse who shall not have attained the age of fourteen years.

SECTION 34. The General Assembly of this State shall not enact local or special laws concerning any of the following subjects or for any of the following purposes, to wit: Special laws prohibited.

I. To change the names of persons or places.

II. To lay out, open, alter or work roads or highways.

III. To incorporate cities, towns or villages, or change, amend or extend the charter thereof.

IV. To incorporate educational, religious, charitable, social, manufacturing or banking institutions not under control of the State, or amend or extend the charters thereof.

V. To incorporate school districts.

VI. To authorize the adoption or legitimation of children.

VII. To provide for the protection of game.

VIII. To summon and empanel grand or petit jurors.

IX. To provide for the age at which citizens shall be subject to road or other public duty.

X. To fix the amount or manner of compensation to be paid to any County officer except that the laws may be so made as to grade the compensation in proportion to the population and necessary service required.

XI. In all other cases, where a general law can be made applicable, no special law shall be enacted.

XII. The General Assembly shall forthwith enact general laws concerning said subjects for said purposes, which shall be uniform in their operations: *Provided*, That nothing contained in this Section shall prohibit the General Assembly from enacting special provisions in general laws.

XIII. The provisions of this Section shall not apply to charitable and educational corporations where, under the terms of a gift, devise, or will, special incorporation may be required.

SECTION 35. It shall be the duty of the General Assembly to enact laws limiting the number of acres of land which any alien or any corporation controlled by aliens may own within this State. Lands owned by aliens.

ARTICLE IV.

EXECUTIVE DEPARTMENT.

SECTION 1. The supreme executive authority of this State shall be vested in a Chief Magistrate, who shall be styled "The Governor of the State of South Carolina." Chief Magistrate.

SECTION 2. The Governor shall be elected by the electors duly qualified to vote for members of the House of Representatives, and shall hold his office for two years, and until his successor shall be chosen and qualified, and shall be re-eligible. He shall Governor.

be elected at the first general election held under this Constitution for members of the General Assembly, and at each general election thereafter, and shall be installed during the first session of the said General Assembly after his election, on such day as shall be provided by law. The other State officers-elect shall at the same time enter upon the performance of their duties.

State officers.

Qualifications of Governor.

SECTION 3. No person shall be eligible to the office of Governor who denies the existence of the Supreme Being; or who at the time of such election has not attained the age of thirty years; and who shall not have been a citizen of the United States and a citizen and resident of this State for five years next preceding the day of election. No person while governor shall hold any office or other commission (except in the militia) under the authority of this State, or of any other power, at one and the same time.

Boards of Canvassers transmit returns of election for Governor.

SECTION 4. The returns of every election for Governor shall be sealed up by the Boards of Canvassers in the respective Counties, and transmitted, by mail, to the seat of Government, directed to the Secretary of State, who shall deliver them to the Speaker of the House of Representatives at the next ensuing session of the General Assembly; and duplicates of said returns shall be filed with the Clerks of the Courts of said Counties. It shall be the duty of any Clerk of Court to forward to the Secretary of State a certified copy of said returns upon being notified that the returns previously forwarded by mail have not been received at his office. It shall be the duty of the Secretary of State, after the expiration of seven days from the day upon which the votes have been canvassed by the County Board, if the returns thereof from any County have not been received, to notify the Clerk of the Court of said County, and order a copy of the returns filed in his office to be forwarded forthwith. The Secretary of State shall deliver the returns to the Speaker of the House of Representatives, at the next ensuing session of the General Assembly; and during the first week of the session, or as soon as the General Assembly shall have organized by the election of the presiding officers of the two houses, the Speaker shall open and publish them in the presence of both houses. The person having the highest number of votes shall be Governor; but if two or more shall be equal, and highest in votes, the General Assembly shall during the same session, in the House of Representatives, choose one of them Governor *viva voce*. Contested elections for Governor shall be determined by the General Assembly in such manner as shall be prescribed by law.

Returns delivered to Speaker of House of Representatives.

Contested elections.

Lieutenant Governor.

SECTION 5. A Lieutenant Governor shall be chosen at the same time, in the same manner, continue in office for the same period and be possessed of the same qualifications as the Governor, and shall *ex officio*, be President of the Senate.

Vote of Lieutenant Governor.

SECTION 6. The Lieutenant Governor while presiding in the Senate shall have no vote, unless the Senate be equally divided.

SECTION 7. The Senate shall, as soon as practicable after the convening of the General Assembly, choose a President *pro tempore* to act in the absence of the Lieutenant Governor, or when he shall fill the office of Governor. President *pro tempore* of Senate.

SECTION 8. A member of the Senate acting as Governor or Lieutenant Governor shall thereupon vacate his seat and another person shall be elected in his stead. Member of Senate acting as Governor.

SECTION 9. In case of the removal of the Governor from office by impeachment, death, resignation, disqualification, disability, or removal from the State, the Lieutenant Governor shall then be Governor; and in case of the removal of the last named officer from his office by impeachment, death, resignation, disqualification, disability, or removal from the State, the President *pro tempore* of the Senate shall be Governor; and the last named officer shall then forthwith, by proclamation, convene the Senate in order that a President *pro tempore* may be chosen. In case the Governor be impeached, the Lieutenant Governor shall act in his stead and have his powers until judgment in the case shall have been pronounced. In case of the temporary disability of the Governor the Lieutenant Governor shall perform the duties of the Governor. Vacancy in office of Governor or Lieutenant Governor, how filled.

SECTION 10. The Governor shall be Commander-in-Chief of the militia of the State, except when they shall be called into the active service of the United States. Commander-in-Chief.

SECTION 11. He shall have power to grant reprieves, commutations and pardons after conviction (except in cases of impeachment), in such manner, on such terms and under such restrictions as he shall think proper; and he shall have power to remit fines and forfeitures, unless otherwise directed by law. It shall be his duty to report to the General Assembly, at the next regular session thereafter, all pardons granted by him, with the report of the Board of Pardons. Every petition for pardon or commutation of sentence may be first referred by him to a Board of Pardons, to be provided by the General Assembly, which Board shall hear all such petitions under such rules and regulations as the General Assembly may provide. The Governor may adopt the recommendations of said Board, but in case he does not he shall submit his reasons to the General Assembly. Pardons. Board of Pardons.

SECTION 12. He shall take care that the laws be faithfully executed in mercy. Laws executed.

SECTION 13. The Governor and Lieutenant Governor shall, at stated times, receive for their services compensation, which shall be neither increased nor diminished during the period for which they shall have been elected. Compensation of Governor and Lieutenant Governor.

SECTION 14. All officers in the Executive Department, and all Boards of public institutions, shall, when required by the Governor, give him information in writing upon any subject relating to the duties of their respective offices or the concerns of their Officers and Boards report to Governor.

respective institutions, including itemized accounts of receipts and disbursements.

Information to Legislature.

SECTION 15. The Governor shall, from time to time, give to the General Assembly information of the condition of the State, and recommend for its consideration such measures as he shall deem necessary or expedient.

Extra sessions.

SECTION 16. He may on extraordinary occasions convene the General Assembly in extra session. Should either house remain without a quorum for five days, or in case of disagreement between the two houses during any session with respect to the time of adjournment, he may adjourn them to such time as he shall think proper, not beyond the time of the annual session then next ensuing.

Governor may adjourn General Assembly.

Commissions.

SECTION 17. He shall commission all officers of the State.

Seal of State.

SECTION 18. The Seal of the State now in use shall be used by the Governor officially, and shall be called "The Great Seal of the State of South Carolina."

Grants and commissioos.

SECTION 19. All grants and commissions shall be issued in the name and by the authority of the State of South Carolina, sealed with the Great Seal, signed by the Governor, and countersigned by the Secretary of State.

Oath of Governor and Lieutenant Governor.

SECTION 20. The Governor and Lieutenant Governor, before entering upon the duties of their respective offices, shall take and subscribe the oath of office as prescribed in Article III, Section 26, of the Constitution.

Residence of Governor.

SECTION 21. The Governor shall reside at the Capital of the State, except in cases of contagion or the emergencies of war; but during the sittings of the General Assembly he shall reside where its sessions are held.

Suspension of officers.

SECTION 22. Whenever it shall be brought to the notice of the Governor by affidavit that any officer who has the custody of public or trust funds is probably guilty of embezzlement or the appropriation of public or trust funds to private use, then the Governor shall direct his immediate prosecution by the proper officer, and upon true bill found the Governor shall suspend such officer and appoint one in his stead, until he shall have been acquitted by the verdict of a jury. In case of conviction the office shall be declared vacant and the vacancy filled as may be provided by law.

Bill or Joint Resolution must be signed or vetoed by the Governor.

SECTION 23. Every Bill or Joint Resolution which shall have passed the General Assembly, except on a question of adjournment, shall, before it becomes a law, be presented to the Governor, and if he approve he shall sign it; if not, he shall return it, with his objections, to the house in which it originated, which shall enter the objection at large on its Journal and proceed to reconsider it. If after such reconsideration two-thirds of that house shall agree to pass it, it shall be sent, together with the objections, to the other house, by which it shall be reconsidered,

and if approved by two-thirds of that house it shall have the same effect as if it had been signed by the Governor; but in all such cases the vote of both houses shall be taken by yeas and nays, and the names of the persons voting for and against the Bill or Joint Resolution shall be entered on the Journals of both houses respectively. Bills appropriating money out of the Treasury shall specify the objects and purposes for which the same are made, and appropriate to them respectively their several amounts in distinct items and Sections. If the Governor shall not approve any one or more of the items or Sections contained in any Bill, but shall approve of the residue thereof, it shall become a law as to the residue in like manner as if he had signed it. The Governor shall then return the Bill with his objections to the items or Sections of the same not approved by him to the house in which the Bill originated, which house shall enter the objections at large upon its Journal and proceed to reconsider so much of said Bill as is not approved by the Governor. The same proceedings shall be had in both houses in reconsidering the same as is provided in case of an entire Bill returned by the Governor with his objections; and if any item or Section of said Bill not approved by the Governor shall be passed by two-thirds of each house of the General Assembly, it shall become a part of said law notwithstanding the objections of the Governor. If a Bill or Joint Resolution shall not be returned by the Governor within three days after it shall have been presented to him, Sundays excepted, it shall have the same force and effect as if he had signed it, unless the General Assembly, by adjournment, prevent its return, in which case it shall have such force and effect unless returned within two days after the next meeting.

Other State officers.

SECTION 24. There shall be elected by the qualified voters of the State a Secretary of State, a Comptroller-General, an Attorney-General, a Treasurer, an Adjutant and Inspector-General, and a Superintendent of Education, who shall hold their respective offices for the term of two years, and until their several successors have been chosen and qualified; and whose duties and compensation shall be prescribed by law. The compensation of such officers shall be neither increased nor diminished during the period for which they shall have been elected.

ARTICLE V.

JUDICIAL DEPARTMENT.

Judicial power vested in certain Courts.

SECTION 1. The judicial power of this State shall be vested in a Supreme Court, in two Circuit Courts, to wit: A Court of Common Pleas having civil jurisdiction and a Court of General Ses-

sions with criminal jurisdiction only. The General Assembly may also establish County Courts, Municipal Courts and such Courts in any or all of the Counties of this State inferior to Circuit Courts as may be deemed necessary, but none of such Courts shall ever be invested with jurisdiction to try cases of murder, manslaughter, rape or attempt to rape, arson, common law burglary, bribery or perjury: *Provided*, Before a County Court shall be established in any County it must be submitted to the qualified electors and a majority of those voting must vote for its establishment.

Supreme Court.

SECTION 2. The Supreme Court shall consist of a Chief Justice and three Associate Justices, any three of whom shall constitute a quorum for the transaction of business. The Chief Justice shall preside, and in his absence the senior Associate Justice. They shall be elected by a joint *viva voce* vote of the General Assembly for the term of eight years, and shall continue in office until their successors shall be elected and qualified, and shall be so classified that one of them shall go out of office every two years.

Present Chief Justice and Associate Justice.

SECTION 3. The present Chief Justice and Associate Justices of the Supreme Court are declared to be the Chief Justice and two of the Associate Justices of said Court as herein established until the terms for which they were elected shall expire, and the General Assembly at its next session shall elect the third Associate Justice and make suitable provision for accomplishing the classification above directed.

Jurisdiction of Supreme Court.

SECTION 4. The Supreme Court shall have power to issue writs or orders of injunction, mandamus, quo warranto, prohibition, certiorari, habeas corpus and other original and remedial writs. And said Court shall have appellate jurisdiction only in cases of chancery, and in such appeals they shall review the findings of fact as well as the law, except in chancery cases where the facts are settled by a jury and the verdict not set aside, and shall constitute a Court for the correction of errors at law under such regulations as the General Assembly may by law prescribe.

Held twice a year at capital.

SECTION 5. The Supreme Court shall be held at least twice in each year at the seat of government and at such other place or places in the State as the General Assembly may direct.

Disqualification of Judges in certain cases.

SECTION 6. No Judge shall preside at the trial of any cause in the event of which he may be interested, or when either of the parties shall be connected with him by affinity or consanguinity, within such degrees as may be prescribed by law, or in which he may have been counsel or have presided in any inferior Court. In case all or any of the Justices of the Supreme Court shall be thus disqualified, or be otherwise prevented from presiding in any cause or causes, the Court or the Justices thereof shall certify the same to the Governor of the State, and he shall immediately commission, specially, the requisite number of men learned in the law for the trial and determination thereof. The same course

Vacancies, how filled.

shall be pursued in the Circuit and inferior Courts as is prescribed in this Section for cases of the Supreme Court. The General Assembly shall provide by law for the temporary appointment of men learned in the law to hold either special or regular terms of the Circuit Courts whenever there may be necessity for such appointment. Holding Circuit Courts.

SECTION 7. There shall be appointed by the Justices of the Supreme Court a Reporter and a Clerk of said Court, who shall hold their offices for four years, and whose duties and compensation shall be prescribed by law. Reporter. Clerk.

SECTION 8. When a judgment or decree is reversed or affirmed by the Supreme Court, every point made and distinctly stated in the cause and fairly arising upon the record of the case shall be considered and decided, and the reason thereof shall be concisely and briefly stated in writing and preserved with the record of the case. Judgment of Supreme Court.

SECTION 9. The Justice of the Supreme Court and Judges of the Circuit Court shall each receive compensation for their services to be fixed by law, which shall not be increased or diminished during their continuance in office. They shall not be allowed any fees or perquisites of office, nor shall they hold any other office of trust or profit under this State, the United States, or any other power. Compensation of Judges and Justices.

SECTION 10. No person shall be eligible to the office of Chief Justice, Associate Justice or Judge of the Circuit Court who is not at the time of his election a citizen of the United States and of this State, and has not attained the age of twenty-six years, has not been a licensed attorney at law for at least five years, and been a resident of this State for five years next preceding his election. Qualifications of.

SECTION 11. All vacancies in the Supreme Court or inferior tribunals shall be filled by elections as herein prescribed: *Provided*, That if the unexpired term does not exceed one year such vacancy may be filled by Executive appointment. All Judges, by virtue of their office, shall be conservators of the peace throughout the State; and when a vacancy is filled by either appointment or election, the incumbent shall hold only for the unexpired term of his predecessor. Vacancies. Conservators. Unexpired term.

SECTION 12. In all cases decided by the Supreme Court the concurrence of three of the Justices shall be necessary for a reversal of the judgment below, but if the four Justices equally divide in opinion the judgment below shall be affirmed, subject to the provisions hereinafter prescribed. Whenever, upon the hearing of any cause or question before the Supreme Court, in the exercise of its original or appellate jurisdiction, it shall appear to the Justices thereof, or any two of them, that there is involved a question of constitutional law, or of conflict between the Constitution and laws of this State and of the United States, or between the duties and obligations of her citizens under the same, upon Three necessary for reversal. Constitutional questions.

the determination of which the entire Court is not agreed; or whenever the Justices of said Court, or any two of them, desire it on any cause or question so before said Court, the Chief Justice, or in his absence the presiding Associate Justice, shall call to the assistance of the Supreme Court all of the Judges of the Circuit Court: *Provided, however*, That when the matter to be submitted is involved in an appeal from the Circuit Court, the Circuit Judge who tried the cause shall not sit. A majority of the Justices of the Supreme Court and Circuit Judges shall constitute a quorum. The decision of the Court so constituted, or a majority of the Justices and Judges sitting, shall be final and conclusive. In such case the Chief Justice, or in his absence the presiding Associate Justice, shall preside. Whenever the Justices of the Supreme Court and the Circuit Judges meet together for the purposes aforesaid, if the number thereof qualified to sit constitute an even number, then one of the Circuit Judges must retire; and the Circuit Judges present shall determine by lot which of their number shall retire.

Judge shall not sit.

Number even, one must retire.

Judicial Circuits.

SECTION 13. The State shall be divided into as many Judicial Circuits as the General Assembly may prescribe, and for each Circuit a Judge shall be elected by joint *viva voce* vote of the General Assembly, who shall hold his office for the term of four years; and at the time of his election he shall be an elector of a County of, and during his continuance in office he shall reside in, the Circuit of which he is Judge. The present Judges of the Circuit Courts shall continue in office until the expiration of the terms for which they were elected, and, should a new division of the Judicial Circuits be made, shall be the Judges of the respective Circuits in which they shall reside after said division.

Election of Judges.

Present Judges.

Interchange of Circuits.

SECTION 14. Judges of the Circuit Courts shall interchange Circuits with each other, and the General Assembly shall provide therefor.

Jurisdiction of Courts of Common Pleas.

SECTION 15. The Courts of Common Pleas shall have original jurisdiction, subject to appeal to the Supreme Court, to issue writs or orders of injunction, mandamus, habeas corpus, and such other writs as may be necessary to carry their powers into full effect. They shall have jurisdiction in all civil cases. They shall have appellate jurisdiction in all cases within the jurisdiction of inferior Courts, except from such inferior Courts from which the General Assembly shall provide an appeal directly to the Supreme Court.

Sit twice.

SECTION 16. The Court of Common Pleas shall sit in each County in this State at least twice in every year at such stated times and places as may be appointed by law.

Decisions, when filed.

SECTION 17. It shall be the duty of the Justices of the Supreme Court to file their decisions within sixty days from the last day of the Court at which the cases were heard; and the duty of the Judges of the Circuit Courts to file their decisions within

sixty days from the rising of the last Court of the Circuit then being held.

Court of General Sessions.

SECTION 18. The Court of General Sessions shall have jurisdiction in all criminal cases except those cases in which exclusive jurisdiction shall be given to inferior Courts, and in these it shall have appellate jurisdiction. It shall also have concurrent jurisdiction with, as well as appellate jurisdiction from, the inferior Courts in all cases of riot, assault and battery, and larceny. It shall sit in each County in the State at least twice in each year at such stated times and places as the Genral Assembly may direct.

Court of Probate.

SECTION 19. The Court of Probate shall remain as now established in the County of Charleston. In all other Counties of the State the jurisdiction in all matters testamentary and of administration, in business appertaining to minors and the allotment of dower, in cases of idiocy and lunacy, and persons *non compos mentis*, shall be vested as the General Assembly may provide, and until such provision such jurisdiction shall remain in the Court of Probate as now established.

Magistrates.

Term of office.

Constables.

Salary.

SECTION 20. A sufficient number of Magistrates shall be appointed and commissioned by the Governor, by and with the advice and consent of the Senate, for each County, who shall hold their offices for the term of two years and until their successors are appointed and qualified. Each Magistrate shall have the power, under such regulations as may now or hereafter be provided by law, to appoint one or more Constables to execute writs and processes issued by him. The present Trial Justices are declared Magistrates as herein created, and shall exercise the powers and duties of said office of Magistrate until their successors shall be appointed and qualified. Each Magistrate shall receive a salary, to be fixed by the General Assembly, in lieu of all fees in criminal cases.

Jurisdiction of Magistrates.

Examining Courts.

SECTION 21. Magistrates shall have jurisdiction in such civil cases as the General Assembly may prescribe: *Provided*, Such jurisdiction shall not extend to cases where the value of property in controversy, or the amount claimed, exceeds one hundred dollars, or to cases where the title to real estate is in question, or to cases in chancery. They shall have exclusive jurisdiction in such criminal cases as the General Assembly may prescribe: *Provided, further*, Such jurisdiction shall not extend to cases where the punishment exceeds a fine of one hundred dollars or imprisonment for thirty days. In criminal matters beyond their jurisdiction to try, they shall sit as Examining Courts, and commit, discharge or (except in capital cases) recognize persons charged with such offences, subject to such regulations as the General Assembly may provide. They shall also have the power to bind over to keep the peace and for good behavior for a time not to exceed twelve months.

Trial by Jury.

SECTION 22. All persons charged with an offence shall have the right to demand and obtain a trial by jury. The jury in cases civil or criminal in all municipal Courts, and Courts inferior to Circuit Courts shall consist of six. The grand jury of each County shall consist of eighteen members, twelve of whom must agree in a matter before it can be submitted to the Court.

Jury in inferior Courts.

Grand jury.

Petit jury.

The petit jury of the Circuit Courts shall consist of twelve men, all of whom must agree to a verdict in order to render the same.

Qualifications of jurors.

Each juror must be a qualified elector under the provisions of this Constitution, between the ages of twenty-one and sixty-five years and of good moral character.

Actions in Magistrates' Courts.

SECTION 23. Every civil action cognizable by Magistrates shall be brought before a Magistrate in the County where the defendant resides, and every criminal action in the County where the offence was committed. In all cases tried by them, the right of appeal shall be secured under such rules and regulations as may be provided by law: *Provided*, That in Counties where Magistrates have separate and exclusive territorial jurisdiction, criminal causes shall be tried in the Magistrate's district where the offence was committed, subject to such provision for change of venue from one Magistrate's district to another in the same County as may be provided by the General Assembly.

Compensation for all other officers.

SECTION 24. All officers other than those named in Section nine provided for in this Article shall receive for their services such compensation as the General Assembly may from time to time by law direct.

Powers at Chambers.

SECTION 25. Each of the Justices of the Supreme Court and Judges of the Circuit Court shall have the same power at chambers to issue writs of habeas corpus, mandamus, quo warranto, certiorari, prohibition and interlocutory writs or orders of injunction as when in open Court. The Judges of the Circuit Courts shall have such powers at chambers as the General Assembly may provide.

Charge to juries.

SECTION 26. Judges shall not charge juries in respect to matters of fact, but shall declare the law.

Clerk of Court.

SECTION 27. There shall be elected in each County, by the electors thereof, one Clerk for the Court of Common Pleas, who shall hold his office for the term of four years, and until his successor shall be elected and qualified. He shall, by virtue of his office, be Clerk of all other Courts of record held therein, but the General Assembly may provide by law for the election of a Clerk, with a like term of office, for each or any other of the Courts of record, and may authorize the Judge of the Probate Court to perform the duties of Clerk for his Court under such regulations as the General Assembly may direct. Clerks of Courts shall be removable for such cause and in such manner as shall be prescribed by law.

SECTION 28. There shall be an Attorney General for the State, who shall perform such duties as may be prescribed by law. He shall be elected by the qualified electors of the State for the term of two years, and shall receive for his services such compensation as shall be fixed by law. Attorney General.

SECTION 29. There shall be one Solicitor for each Circuit, who shall reside therein, to be elected by the qualified electors of the Circuit, who shall hold his office for the term of four years, and shall receive for his services such compensation as shall be fixed by law. In all cases when an Attorney for the State of any Circuit fails to attend and prosecute according to law, the Court shall have power to appoint an Attorney *pro tempore*. In the event of the establishment of County Courts the General Assembly may provide for one Solicitor for each County in the place and instead of the Circuit Solicitor, and may prescribe his powers, duties and compensation. Solicitor.

SECTION 30. The qualified electors of each County shall elect a Sheriff and Coroner for the term of four years, and until their successors are elected and qualified; they shall reside in their respective Counties during their continuance in office, and be disqualified for the office a second time if it should appear that they, or either of them, are in default for moneys collected by virtue of their respective offices. Sheriff and Coroner.

SECTION 31. All writs and processes shall run and all prosecutions shall be conducted in the name of the State of South Carolina; all writs shall be attested by the Clerk of the Court from which they shall be issued; and all indictment shall conclude "against the peace and dignity of the State." Writs. Indictments.

SECTION 32. The General Assembly shall provide by law for the speedy publication of the decisions of the Supreme Court made under this Constitution. Decision of Supreme Court.

SECTION 33. Circuit Courts and all Courts inferior thereto and municipal Courts shall have the power, in their discretion, to impose sentence of labor upon highways, streets and other public works upon persons by them sentenced to imprisonment. Sentence to labor on highways.

SECTION 34. All matters, civil and criminal, now pending within the jurisdiction of any of the Courts of this State shall continue therein until disposed of according to law. Matters now pending.

ARTICLE VI.

JURISPRUDENCE.

SECTION 1. The General Assembly shall pass laws allowing differences to be decided by arbitrators, to be appointed by the parties who may choose that mode of adjustment. Arbitration.

Change of venue.

SECTION 2. It shall be the duty of the General Assembly to pass laws for the change of venue in all cases, civil and criminal, over which the Circuit Courts have original jurisdiction, upon a proper showing, supported by affidavit, that a fair and impartial trial cannot be had in the County where such action or prosecution was commenced. The State shall have the same right to move for a change of venue that a defendant has for such offences as the General Assembly may prescribe. Unless a change of venue be had under the provisions of this Article the defendant shall be tried in the County where the offence was committed: *Provided, however*, That no change of venue shall be granted in criminal cases until after a true bill has been found by the grand jury: *And Provided, further*, That if a change be ordered it shall be to a County in the same Judicial Circuit.

Law and equity.

SECTION 3. Justice shall be administered in a uniform mode of pleading without distinction between law and equity.

Statute public law.

SECTION 4. Every Statute shall be a public law, unless otherwise declared in the Statute itself.

Codification of laws.

SECTION 5. The General Assembly, at its first session after the adoption of this Constitution, shall provide for the appointment or election of a Commissioner, whose duty it shall be to collect and revise all the General Statute law of this State then of force as well as that which shall be passed from time to time, and to properly index and arrange the said Statutes when so passed. And the said Commissioner shall reduce into a systematic Code the general statutes, including the Code of Civil Procedure, with all the amendments thereto, and shall, on the first day of the session for the year nineteen hundred and one, and at the end of every subsequent period of not more than ten years, report the result of his labors to the General Assembly, with such recommendations and suggestions as to the abridgment and amendments as may be deemed necessary or proper. Said report when ready to be made, shall be printed and a copy thereof laid upon the desk of each member of both houses of the General Assembly on the first day of the first session, but shall not be taken up for consideration until the next session of said General Assembly. The said Code shall be declared by the General Assembly, in an Act passed according to the forms of this Constitution for the enactment of laws, to be the only general statutory law of the State; but no alterations or additions to any of the laws therein contained shall be made except by Bill passed under the formalities heretofore prescribed for the passage of laws. Provision shall be made by law for filling vacancies, regulating the term of office and the compensation of said Commissioner, not exceeding five hundred dollars per annum, and imposing such other duties as may be desired. And the General Assembly shall by committee inquire into the progress of his work at each session.

SECTION 6. In the case of any prisoner lawfully in the charge, custody or control of any officer, State, County or municipal, being seized and taken from said officer through his negligence, permission or connivance, by a mob or other unlawful assemblage of persons, and at their hands suffering bodily violence or death, the said officer shall be deemed guilty of a misdemeanor, and, upon true bill found, shall be deposed from his office pending his trial, and upon conviction shall forfeit his office, and shall, unless pardoned by the Governor, be ineligible to hold any office of trust or profit within this State. It shall be the duty of the Prosecuting Attorney within whose Circuit or County the offence may be committed to forthwith institute a prosecution against said officer, who shall be tried in such County, in the same Circuit, other than the one in which the offence was committed, as the Attorney General may elect. The fees and mileage of all material witnesses, both for the State and for the defence, shall be paid by the State Treasurer, in such manner as may be provided by law: *Provided*, In all cases of lynching when death ensues, the County where such lynching takes place shall, without regard to the conduct of the officers, be liable in exemplary damages of not less than two thousand dollars to the legal representatives of the person lynched: *Provided, further*, That any County against which a judgment has been obtained for damages in any case of lynching shall have the right to recover the amount of said judgment from the parties engaged in said lynching in any Court of competent jurisdiction.

Prisoner lynched through negligence of officer, penalty on officer.

County liable for damages.

ARTICLE VII.

COUNTIES AND COUNTY GOVERNMENT.

SECTION 1. The General Assembly may establish new Counties in the following manner: Whenever one-third of the qualified electors within the area of each section of an old County proposed to be cut off to form a new County shall petition the Governor for the creation of a new County, setting forth the boundaries and showing compliance with the requirements of this Article, the Governor shall order an election, within a reasonable time thereafter, by the qualified electors within the proposed area, in which election they shall vote "Yes" or "No" upon the question of creating said new County; and at the same election the question of a name and a County seat for such County shall be submitted to the electors.

Formation of new Counties.

County seat and name.

SECTION 2. If two-thirds of the qualified electors voting at such election shall vote "Yes" upon such questions, then the General Assembly at the next session shall establish such new County: *Provided*, No section of the County proposed to be dismembered shall be thus cut off without consent by a two-thirds vote

Section of old County to be cut off.

of those voting in such section; and no County shall be formed without complying with all the conditions imposed in this Article. An election upon the question of forming the same proposed new County shall not be held oftener than once in four years.

Inhabitants, taxable property, area of new County.

SECTION 3. No new County hereafter formed shall contain less than one one hundred and twenty-fourth part of the whole number of inhabitants of the State, nor shall it have less assessed taxable property than one and one half millions of dollars as shown by the last tax returns, nor shall it contain less area than four hundred square miles.

Area, taxable property, and inhabitants of old County.

SECTION 4. No old County shall be reduced to less area than five hundred square miles, to less assessed taxable property than two million dollars, nor to a smaller population than fifteen thousand inhabitants.

Eight mile limit.

SECTION 5. In the formation of new Counties no old County shall be cut within eight miles of its court house building.

Indebtedness.

SECTION 6. All new Counties hereafter formed shall bear a just apportionment of the valid indebtedness of the old County or Counties from which they have been formed.

Alteration of County lines.

SECTION 7. The General Assembly shall have the power to alter County lines at any time: *Provided*, That before any existing County line is altered the question shall be first submitted to the qualified electors of the territory proposed to be taken from one County and given to another, and shall have received two-thirds of the votes cast: *Provided further*, That the change shall not reduce the County from which the territory is taken below the limits prescribed in Sections 3, 4 and 5 of this Article: *Provided*, That the proper proportion of the existing County indebtedness of the section so transferred shall be assumed by the County to which the territory is transferred.

Removal of County seat.

SECTION 8. No County seat shall be removed except by a vote of two-thirds of the qualified electors of said County voting in an election held for that purpose, but such election shall not be held in any County oftener than once in five years.

Election district. Body corporate.

SECTION 9. Each County shall constitute one election district, and shall be a body politic and corporate.

Consolidation of two or more Counties

SECTION 10. The General Assembly may provide for the consolidation of two or more existing Counties if a majority of the qualified electors of such Counties voting at an election held for that purpose shall vote separately therefor, but such election shall not be held oftener than once in four years in the same Counties.

Townships.

SECTION 11. Each of the several townships of this State, with names and boundaries as now established by law, shall constitute a body politic and corporate, but this shall not prevent the General Assembly from organizing other townships or changing the boundaries of those already established; and the General Assembly may provide such system of township government as it shall

Body corporate.

think proper in any and all the Counties, and may make special provision for municipal government and for the protection of chartered rights and powers of municipalities. Township government.

SECTION 12. Until changed by the General Assembly, as allowed by this Constitution, the boundaries of the several Counties shall remain as now established, except that the boundaries of the County of Edgefield shall undergo such changes as are made necessary by the formation of a new County from a portion of Edgefield, to be known as Saluda, the boundaries of which are set forth in a Constitutional ordinance. The election ordered in said ordinance for the location of its County seat shall be held under the Constitution and laws now of force. And the General Assembly shall provide for the assessment of property in the County of Saluda for the fiscal year beginning January first, eighteen hundred and ninety-six, and for the collection of said taxes when assessed. Boundaries of Counties. Boundaries of Counties of Saluda and Edgefield.

SECTION 13. The General Assembly may at any time arrange the various Counties into Judicial Circuits, and into Congressional Districts, including the County of Saluda, as it may deem wise and proper, and may establish or alter the location of voting precincts in any County. Judicial and Congressional Districts.

SECTION 14. Hereafter no County lines shall be so established as to pass through any incorporated city or town of this State. No County line through city or town.

ARTICLE VIII.

MUNICIPAL CORPORATIONS AND POLICE REGULATIONS.

SECTION 1. The General Assembly shall provide by general laws for the organization and classification of municipal corporations. The powers of each class shall be defined so that no such corporations shall have any powers or be subject to any restrictions other than all corporations of the same class. Cities and towns now existing under special charters may reorganize under the general laws of the State, and when so reorganized their special charters shall cease and determine. Organization and classification of municipal corporations.

SECTION 2. No city or town shall be organized without the consent of the majority of the electors residing and entitled by law to vote within the district proposed to be incorporated; such consent to be ascertained in the manner and under such regulations as may be prescribed by law. Electors must consent to organization.

SECTION 3. The General Assembly shall restrict the powers of cities and towns to levy taxes and assessments, to borrow money and to contract debts, and no tax or assessment shall be levied or debt contracted except in pursuance of law, for public purposes specified by law. Taxes.

SECTION 4. No law shall be passed by the General Assembly granting the right to construct and operate a street or other rail- Street railway, &c.

way, telegraph, telephone or electric plant, or to erect water or gas works for public uses or to lay mains for any purpose, without first obtaining the consent of the local authorities in control of the streets or public places proposed to be occupied for any such or like purposes.

Water works and plants for furnishing lights.

SECTION 5. Cities and towns may acquire, by construction or purchase, and may operate, water works systems and plants for furnishing lights, and may furnish water and lights to individuals, firms and private corporations for reasonable compensation: *Provided*, That no such construction or purchase shall be made except upon a majority vote of the electors in said cities or towns who are qualified to vote on the bonded indebtedness of said cities or towns.

Corporate taxes must be uniform.

SECTION 6. The corporate authorities of cities and towns in this State shall be vested with power to assess and collect taxes for corporate purposes, said taxes to be uniform in respect to persons and property within the jurisdiction of the body composing the same; and all the property, except such as is exempt by law, within the limits of cities and towns shall be taxed for the payment of debts contracted under authority of law. License or privileged taxes imposed shall be graduated so as to secure a just imposition of such tax upon the classes subject thereto.

License.

Bonded debt.

SECTION 7. No city or town in this State shall hereafter incur any bonded debt which, including existing bonded indebtedness, shall exceed eight per centum of the assessed value of the taxable property therein, and no such debt shall be created without submitting the question as to the creation thereof to the qualified electors of such city or town, as provided in this Constitution for such special elections; and unless a majority of such electors voting on the question shall be in favor of creating such further bonded debt, none shall be created: *Provided*, That this Section shall not be construed to prevent the issuing of certificates of indebtedness in anticipation of the collection of taxes for amounts actually contained or to be contained in the taxes for the year when such certificates are issued and payable out of such taxes: *And provided, further*, That such cities and towns shall on the issuing of such bonds create a sinking fund for the redemption thereof at maturity. Nothing herein contained shall prevent the issuing of bonds to an amount sufficient to refund bonded indebtedness existing at the time of the adoption of this Constitution.

Certificates of indebtedness.

Sinking fund.

Refunding bonded debt.

Manufactories may be exempt from taxation.

SECTION 8. Cities and towns may exempt from taxation, by general or special ordinance, except for school purposes, manufactories established within their limits for five successive years from the time of the establishment of such manufactories: *Provided*, That such ordinance shall be first ratified by a majority of such qualified electors of such city or town as shall vote at an election held for that purpose.

Armed police force.

SECTION 9. No armed police force or representatives of a detective agency shall ever be brought into this State for the suppression of domestic violence; nor shall any other armed or unarmed body of men be brought in for that purpose, except upon the application of the General Assembly or of the Executive of this State (when the General Assembly is not in session), as provided in the Constitution of the United States. The General Assembly shall provide proper penalties for the enforcement of the provisions of this Section.

Boards of Health.

SECTION 10. It shall be the duty of the General Assembly to create Boards of Health wherever they may be necessary, giving to them power and authority to make such regulations as shall protect the health of the community and abate nuisances.

Alcoholic liquor and beverages.

SECTION 11. In the exercise of the police power the General Assembly shall have the right to prohibit the manufacture and sale and retail of alcoholic liquors or beverages within the State. The General Assembly may license persons or corporations to manufacture and sell and retail alcoholic liquors or beverages within the State under such rules and restrictions as it deems proper; or the General Assembly may prohibit the manufacture and sale and retail of alcoholic liquors and beverages within the State, and may authorize and empower State, County and municipal officers, all or either, under the authority and in the name of the State, to buy in any market and retail within the State liquors and beverages in such packages and quantities, under such rules and regulations, as it deems expedient: *Provided*, That no license shall be granted to sell alcoholic beverages in less quantities than one-half pint, or to sell them between sundown and sunrise, or to sell them to be drunk on the premises: *And provided, further*, That the General Assembly shall not delegate to any municipal corporation the power to issue licenses to sell the same.

Prize fighting.

SECTION 12. All prize-fighting is prohibited in this State, and the General Assembly shall provide by proper laws for the prevention and punishment of the same.

ARTICLE IX.

CORPORATIONS.

Corporation defined.

SECTION 1. The term corporation as used in this Article includes all associations and joint stock companies having powers and privileges not possessed by individuals or partnerships, and excludes municipal corporations.

Charter of incorporation.

SECTION 2. No charter of incorporation shall be granted, changed or amended by special law, except in the case of such charitable, educational, penal or reformatory corporations as may

be under the control of the State, or may be provided for in this Constitution, but the General Assembly shall provide by general laws for changing or amending existing charters, and for the organization of all corporations hereafter to be created, and any such law so passed, as well as all charters now existing or hereafter created, shall be subject to future repeal or alteration: *Provided*, That the General Assembly may by a two-thirds vote of each house on a concurrent resolution allow a Bill for a special charter to be introduced, and when so introduced may pass the same as other Bills.

Transporting and transmitting corporations taxed as such.

SECTION 3. All railroad, express, canal and other corporations engaged in transportation for hire, and all telegraph and other corporations engaged in the business of transmitting intelligence for hire are common carriers in their respective lines of business, and are subject to liability and taxation as such. It shall be unlawful for any such corporation to make any contract relieving it of its common law liability or limiting the same, in reference to the carriage of passengers.

Common law liability.

Agent of corporation.

SECTION 4. Every corporation organized or doing business in this State, other than religious, educational or benevolent associations, shall have and maintain at least one agent in this State upon whom process may be served, and at least one public office for the transaction of its business: *Provided*, This Section shall not apply to mercantile corporations: *Provided*, That nothing contained in this Section shall be construed to prohibit the General Assembly from providing for the service of process on any agent of a corporation so as to bind such corporation.

Office of corporation.

Discrimination in charges.

SECTION 5. No discrimination in charges or facilities for transportation of the same classes of freight or passengers, or for the transmission of intelligence within this State, or coming from or going to any other State, shall be made by any railroad or other transportation or transmission company between places or persons.

Persons and property transported by any railroad or any other transportation or transmission company or corporation, shall be delivered at any station, landing or port at charges not exceeding the charges for the transportation of persons and property of the same class, in the same direction, to any more distant station, landing or port. Excursion and commutation tickets may be issued at special rates. This Section shall not prevent the Railroad Commission from making such competitive rates as shall, in their judgment, be just and equitable between the railroads and the public, at all junctional and competitive points or at points where water competition controls the traffic or at points where the competition of points located in other States may make necessary the prescribing of different rates for the protection of the commerce of this State.

Excursion tickets.

Competitive rates.

SECTION 6. Any railroad or other transportation corporation, and any telegraph or other transmitting corporation, organized under the laws of this State, shall have the right to connect its roads or lines, at the State line, with those in other States, and shall have the right to intersect with or cross any other railroad, street railway, transportation road or transmitting line, and shall each receive and transport the freight, passengers, cars (loaded or empty) and messages delivered to it by another without delay or discrimination.

Transportation company may connect or cross lines of another.

SECTION 7. No railroad, or other transportation company, and no telegraph or other transmitting corporation, or the lessees, purchasers or managers of any such corporation, shall consolidate the stock, property or franchises of such corporation with, or lease or purchase the works or franchises of, or in any way control, any other railroad or other transportation, telegraph or other transmitting company owning or having under its control a parallel or competing line; and the question whether railroads or other transportation, telegraph or other transmitting companies are parallel or competing lines shall, when demanded by the party complainant, be decided by a jury as in other civil causes.

Consolidation of stock with competing line.

Jury may decide whether lines are parallel or competing.

SECTION 8. The General Assembly shall not grant to any foreign corporation or association a license to build, operate or lease any railroad in this State; but in all cases where a railroad is to be built or operated, or is now being operated, in this State, and the same shall be partly in this State and partly in another State, or in other States, the owners or projectors thereof shall first become incorporated under the laws of this State; nor shall any foreign corporation or association lease or operate any railroad in this State, or purchase the same or any interest therein. Consolidation of any railroad lines and corporations in this State with others shall be allowed only where the consolidated company shall become a domestic corporation of this State. No general or special law shall ever be passed for the benefit of any foreign corporation operating a railroad under any existing license of this State or under any existing lease, and no grant of any right or privilege and no exemption from any burden shall be made to any such foreign corporation, except upon the condition that the owners or stockholders thereof shall first organize a corporation in this State under the laws thereof, and shall thereafter operate and manage the same and the business thereof under said domestic charter.

No foreign corporation can build or operate a railroad in this State.

No general or special law for foreign corporation, except on conditions.

SECTION 9. The General Assembly shall have no power to grant any special charter for banking purposes, but corporations or associations may be formed for such purposes under general laws, with such privileges, powers and limitations, not inconsistent with this Constitution, as it may deem proper. The General Assembly shall provide by law for the thorough examination and inspection of all banking and fiscal corporations of this State.

Banks.

Stock issued for money or labor.

SECTION 10. Stock or bonds shall not be issued by any corporation save for labor done, or money or property actually received or subscribed; and all fictitious increase of stock or indebtedness shall be void.

Election of officers of corporations.

SECTION 11. The General Assembly shall provide by law for the election of directors, trustees or managers of all corporations so that each stockholder shall be allowed to cast, in person or by proxy, as many votes as the number of shares he owns multiplied by the number of directors, trustees or managers to be elected, the same to be cast for any one candidate or to be distributed among two or more candidates.

Business of corporations.

SECTION 12. Corporations shall not engage in any business except that specifically authorized by their charters or necessarily incident thereto.

Trusts, combinations, &c.

SECTION 13. The General Assembly shall enact laws to prevent all trusts, combinations, contracts and agreements against the public welfare; and to prevent abuses, unjust discriminations and extortion in all charges of transporting and transmitting companies; and shall pass laws for the supervision and regulation of such companies by commission or otherwise, and shall provide adequate penalties, to the extent, if necessary for that purpose, of forfeiture of their franchises.

The Railroad Commission.

SECTION 14. A Commission is hereby established to be known as "the Railroad Commission," which shall be composed of not less than three members, whose powers over all transporting and transmitting corporations, and duties, manner of election and term of office shall be regulated by law; and until otherwise provided by law the said Commissioners shall have the same powers and jurisdiction, perform the same duties and receive the same compensation as now conferred, prescribed and allowed by law to the existing Railroad Commissioners: *Provided*, That the members thereof shall be elected at the expiration of the terms of the present Railroad Commissioners, who are hereby continued in office for the terms for which they were elected.

Rights and remedies of employees.

SECTION 15. Every employee of any railroad corporation shall have the same rights and remedies for any injury suffered by him from the acts or omissions of said corporations or its employees as are allowed by law to other persons not employees, when the injury results from the negligence of a superior agent or officer, or of a person having a right to control or direct the services of a party injured, and also when the injury results from the negligence of a fellow servant engaged in another department of labor from that of the party injured, or of a fellow servant on another train of cars, or one engaged about a different piece of work. Knowledge by any employee injured of the defective or unsafe character or condition of any machinery, ways or appliances shall be no defence to an action for injury caused thereby, except as to conductors or engineers in charge of dangerous or unsafe cars or

engines voluntarily operated by them. When death ensues from any injury to employees, the legal or personal representatives of the person injured shall have the same right and remedies as are allowed by law to such representatives of other persons. Any contract or agreement, expressed or implied, made by any employee to waive the benefit of this Section shall be null and void; and this Section shall not be construed to deprive any employee of a corporation, or his legal or personal representative, of any remedy or right that he now has by the law of the land. The General Assembly may extend the remedies herein provided for to any other class of employees.

Existing charters.

SECTION 16. All existing charters or grants of corporate franchise under which organizations have not in good faith taken place at the adoption of this Constitution shall be subject to the provisions of this Article.

Laws for benefit of corporation passed only on conditions.

SECTION 17. The General Assembly shall never remit the forfeiture of the franchise of any corporation now chartered, nor alter nor amend the charter thereof, nor pass any general or special law for the benefit of such corporation, except upon the condition that such corporation shall thereafter hold its charter and franchise subject to the provisions of this Constitution, and the acceptance by any corporation of any provision of any such laws or the taking of any benefit or advantage from the same shall be conclusively held an agreement by such corporation to hold its charter and franchise under the provisions of this Article.

Liability of stockholders.

In banks.

SECTION 18. The stockholders of all insolvent corporations shall be individually liable to the creditors thereof only to the extent of the amount remaining due to the corporation upon the stock owned by them: *Provided*, That stockholders in banks or banking institutions shall be liable to depositors therein in a sum equal in amount to their stock over and above the face value of the same.

Corporations cannot do act prohibited through controlling interest in other corporations.

SECTION 19. Nothing prohibited in this Article shall be permitted to be done by any corporation or company, persons or person, either for its or their own benefit or otherwise, by its or their holding or controlling in its or their own name or otherwise, or in the name of any other person or persons, or other corporation or company whatsoever, a majority of the capital stock, or of bonds having voting power, of any railroad or transportation company, or corporation created by or existing under the laws of this State, or doing business within this State.

Right of way.

SECTION 20. No right of way shall be appropriated to the use of any corporation until full compensation therefor shall be first made to the owner or secured by a deposit of money, irrespective of any benefit from any improvement proposed by such corpora-

tion, which compensation shall be ascertained by a jury of twelve men, in a Court of record, as shall be prescribed by law.

SECTION 21. The General Assembly shall enforce the provisions of this Article by appropriate legislation.

ARTICLE X.

FINANCE AND TAXATION.

Taxation and assessment.

SECTION 1. The General Assembly shall provide by law for a uniform and equal rate of assessment and taxation, and shall prescribe regulations to secure a just valuation for taxation of all property, real, personal and possessory, except mines and mining claims, the products of which alone shall be taxed; and also excepting such property as may be exempted by law for municipal, educational, literary, scientific, religious or charitable purposes: *Provided, however*, That the General Assembly may impose a capitation tax upon such domestic animals as from their nature and habits are destructive of other property: *And provided, further*, That the General Assembly may provide for a graduated tax on incomes, and for a graduated license on occupations and business.

Expenses of State Government.

SECTION 2. The General Assembly shall provide for an annual tax sufficient to defray the estimated expenses of the State for each year, and whenever it shall happen that the ordinary expenses of the State for any year shall exceed the income of the State for such year the General Assembly shall provide for levying a tax for the ensuing year sufficient, with other sources of income, to pay the deficiency of the preceding year together with the estimated expenses of the ensuing year.

Tax shall be levied in pursuance of law.

SECTION 3. No tax shall be levied except in pursuance of a law which shall distinctly state the object of the same; to which object the tax shall be applied.

Property exempt from taxation.

SECTION 4. There shall be exempted from taxation all County, township and municipal property used exclusively for public purposes and not for revenue, and the property of all schools, colleges and institutions of learning, all charitable institutions in the nature of asylums for the infirm, deaf and dumb, blind, idiotic and indigent persons, except where the profits of such institutions are applied to private uses; all public libraries, churches, parsonages and burying grounds; but property of associations and societies, although connected with charitable objects, shall not be exempt from State, County or municipal taxation: *Provided*, That as to real estate this exemption shall not extend beyond the buildings and premises actually occupied by such schools, colleges, institutions of learning, asylums, libraries, churches, parsonages and burial grounds, although connected with charitable objects.

SECTION 5. The corporate authorities of Counties, townships, school districts, cities, towns and villages may be vested with power to assess and collect taxes for corporate purposes; such taxes to be uniform in respect to persons and property within the jurisdiction of the body imposing the same. All shares of stockholders in any bank or banking association located in this State, whether now or hereafter incorporated, or organized under the laws of this State or of the United States, shall be listed at their true value in money, and taxed for municipal purposes in the city, ward, town or incorporated village, where such bank is located, and not elsewhere: *Provided*, That the words "true value in money" as used in line 12 [line 12 of original MS. and line 9 of this printing.—EDITOR] of this Section shall be so construed as to mean and include all surplus or extra moneys, capital, and every species of personal property of value owned or in possession of any such bank: *Provided*, A like rule of taxation shall apply to the stockholders of all corporations other than banking institutions. And the General Assembly shall require that all the property, except that herein permitted to be exempted within the limits of municipal corporations, shall be taxed for corporate purposes and for the payment of debts contracted under authority of law. The bonded debt of any County, township, school district, municipal corporation or political division or subdivision of this State shall never exceed eight per centum of the assessed value of all the taxable property therein. And no County, township, municipal corporation or other political division of this State shall hereafter be authorized to increase its bonded indebtedness if at the time of any proposed increase thereof the aggregate amount of its already existing bonded debt amounts to eight per centum of the value of all taxable property therein as ascertained by the valuation for State taxation.

Taxes may be levied for corporate purposes.

Share of stockholders.

Limit of bonded debt.

And wherever there shall be several political divisions or municipal corporations covering or extending over the same territory, or portions thereof, possessing a power to levy a tax or contract a debt, then each of such political divisions or municipal corporations shall so exercise its power to increase its debt under the foregoing eight per cent. limitation that the aggregate debt over and upon any territory of this State shall never exceed fifteen per centum of the value of all taxable property in such territory as valued for taxation by the State: *Provided*, That nothing herein shall prevent the issue of bonds for the purpose of paying or refunding any valid municipal debt heretofore contracted in excess of eight per centum of the assessed value of all the taxable property therein.

SECTION 6. The credit of the State shall not be pledged or loaned for the benefit of any individual, company, association or corporation; and the State shall not become a joint owner of or

Credit of State.

stockholder in any company, association or corporation. The General Assembly shall not have power to authorize any County or township to levy a tax or issue bonds for any purpose except for educational purposes, to build and repair public roads, buildings and bridges, to maintain and support prisoners, pay jurors, County officers, and for litigation, quarantine and Court expenses, and for ordinary County purposes, to support paupers, and pay past indebtedness.

For what purposes tax levied or bonds issued.

Scrip, certificate, or evidence of State debt.

SECTION 7. No scrip, certificate or other evidence of State indebtedness shall be issued except for the redemption of stock, bonds or other evidence of indebtedness previously issued, or for such debts as are expressly authorized in this Constitution.

Receipts and expenditures.

SECTION 8. An accurate statement of the receipts and expenditures of the public money shall be published with the laws of each regular session of the General Assembly, in such manner as may by law be directed.

Money.

SECTION 9. Money shall be drawn from the Treasury only in pursuance of appropriations made by law.

Fiscal year.

SECTION 10. The fiscal year shall commence on the first day of January in each year.

Public debt.

SECTION 11. To the end that the public debt of South Carolina may not hereafter be increased without the due consideration and free consent of the people of the State, the General Assembly is hereby forbidden to create any further debt or obligation, either by the loan of the credit of the State, by guaranty, endorsement or otherwise, except for the ordinary and current business of the State, without first submitting the question as to the creation of such new debt, guaranty, endorsement or loan of its credit to the qualified electors of this State at a general State election; and unless two-thirds of the qualified electors of this State, voting on the question, shall be in favor of increasing the debt, guaranty, endorsement or loan of its credit, none shall be created or made. And any debt contracted by the State shall be

State bonds.

by loan on State bonds, of amounts not less than fifty dollars each, bearing interest, payable not more than forty years after final passage of the law authorizing such debt. A correct registry of all such bonds shall be kept by the Treasurer in numerical order, so as to always exhibit the number and amount unpaid, and to whom severally made payable. And the General Assembly shall levy an annual tax sufficient to pay the annual interest on said bonds.

Safe-keeping of public funds.

SECTION 12. Suitable laws shall be passed by the General Assembly for the safe-keeping, transfer and disbursement of the State, County and school funds; and all officers and other persons charged with the same shall keep an accurate entry of each sum received, and of each payment and transfer, and shall give such security for the faithful discharge of such duties as the General Assembly may provide. And it shall be the duty of the Gen-

eral Assembly to pass laws making embezzlement of such funds a felony, punishable by fine and imprisonment, proportioned to the amount of the deficiency or embezzlement, and the party convicted of such felony shall be disqualified from ever holding any office of honor or emolument in this State: *Provided, however*, That the General Assembly, by a two-thirds vote, may remove the disability upon payment in full of the principal and interest of the sum embezzled.

Embezzlement of, felony.

General Assembly may remove.

SECTION 13. The General Assembly shall provide for the assessment of all property for taxation; and State, County, township, school, municipal and all other taxes shall be levied on the same assessment, which shall be that made for State taxes; and the taxes for the subdivisions of the State shall be levied and collected by the respective fiscal authorities thereof.

One assessment for all taxes.

ARTICLE XI.

EDUCATION.

SECTION 1. The supervision of public instruction shall be vested in a State Superintendent of Education, who shall be elected for the term of two years by the qualified electors of the State, in such manner and at such time as the other State officers are elected; his powers, duties and compensation shall be defined by the General Assembly.

Superintendent of Education.

SECTION 2. There shall be a State Board of Education, composed of the Governor, the State Superintendent of Education, and not exceeding seven persons to be appointed by the Governor every four years, of which Board the Governor shall be Chairman, and the State Superintendent of Education, Secretary. This Board shall have the regulation of examination of teachers applying for certificates of qualification, and shall award all scholarships, and have such other powers and duties as may be determined by law. The traveling expenses of the persons to be appointed shall be provided for by the General Assembly.

State Board of Education.

SECTION 3. The General Assembly shall make provision for the election or appointment of all other necessary school officers, and shall define their qualifications, powers, duties, compensation and terms of office.

School officers

SECTION 4. The salaries of the State and County school officers and compensation of County Treasurers for collecting and disbursing school moneys shall not be paid out of the school funds, but shall be otherwise provided for by the General Assembly.

Salaries of school officers and County Treasurer.

SECTION 5. The General Assembly shall provide for a liberal system of free public schools for all children between the ages of six and twenty-one years, and for the division of the Counties

Free public schools.

School districts. into suitable school districts, as compact in form as practicable, having regard to natural boundaries, and not to exceed forty-nine nor be less than nine square miles in area: *Provided*, That in cities of ten thousand inhabitants and over, this limitation of area shall not apply: *Provided, further*, That when any school district laid out under this Section shall embrace cities or towns already embraced into special school districts in which graded Bonded debt. school buildings have been erected by the issue of bonds, or by special taxation, or by donation, all the territory included in said Graded school districts. school district shall bear its just proportion of any tax that may be levied to liquidate such bonds or support the public schools therein: *Provided, further*, That nothing in this Article contained shall be construed as a repeal of the laws under which the several graded school districts of this State are organized. The present division of the Counties into school districts and the provisions of law now governing the same shall remain until changed by the General Assembly.

SECTION 6. The existing County Boards of Commissioners of the several Counties, or such officer or officers as may hereafter be vested with the same or similar powers and duties, shall levy Three mill tax for public schools. an annual tax of three mills on the dollar upon all the taxable property in their respective Counties, which tax shall be collected at the same time and by the same officers as the other taxes for the same year, and shall be held in the County treasury of the respective Counties; and the said fund shall be apportioned among the school districts of the County in proportion to the number of pupils enrolled in the public schools of the respective districts, and the officer or officers charged by law with making said apTrustees disburse. portionment shall notify the Trustees of the respective school districts thereof, who shall expend and disburse the same as the General Assembly may prescribe. The General Assembly shall Enrollment. define "enrollment." Not less than three Trustees for each Trustees. school district shall be selected from the qualified voters and taxpayers therein, in such manner and for such terms as the General Assembly may determine, except in cases of special school districts now existing, where the provisions of law now governing the same shall remain unchanged by the General Assembly: *Provided*, The manner of the selection of said Trustees need not be uniform throughout the State. There Poll tax. shall be assessed on all taxable polls in the State between the ages of twenty-one and sixty years (excepting Confederate soldiers above the age of fifty years,) an annual tax of one dollar on each poll, the proceeds of which tax shall be expended for school purposes in the several school districts in which it is collected. Whenever during the three next ensuing fiscal years the tax levied by the said County Boards of Commissioners or similar officers and the poll Supplementary tax. tax shall not yield an amount equal to three dollars per capita of the number of children enrolled in the public schools of each

County for the scholastic year ending the thirty-first day of October in the year eighteen hundred and ninety-five, as it appears in the report of the State Superintendent of Education for said scholastic year, the Comptroller-General shall, for the aforesaid three next ensuing fiscal years, on the first day of each of said years, levy such an annual tax on the taxable property of the State as he may determine to be necessary to make up such deficiency, to be collected as other State taxes, and apportion the same among the Counties of the State in proportion to the respective deficiencies therein. The sum so apportioned shall be paid by the State Treasurer to the County Treasurers of the respective Counties, in proportion to the respective deficiencies therein, on the warrant of the Comptroller-General, and shall be apportioned among the school districts of the Counties, and disbursed as other school funds; and from and after the thirty-first day of December, in the year eighteen hundred and ninety-eight, the General Assembly shall cause to be levied annually on all the taxable property of the State such a tax, in addition to the said tax levied by the said County Boards of Commissioners or similar officers, and poll tax above provided, as may be necessary to keep the schools open throughout the State for such length of time in each scholastic year as the General Assembly may prescribe; and said tax shall be apportioned among the Counties in proportion to the deficiencies therein and disbursed as other school funds. Any school district may by the authority of the General Assembly levy an additional tax for the support of its schools.

School district tax.

SECTION 7. Separate schools shall be provided for children of the white and colored races, and no child of either race shall ever be permitted to attend a school provided for children of the other race.

Separate schools.

SECTION 8. The General Assembly may provide for the maintenance of Clemson Agricultural College, the University of South Carolina, and the Winthrop Normal and Industrial College, a branch thereof, as now established by law, and may create scholarships therein; the proceeds realized from the land scrip given by the Act of Congress passed the second day of July, in the year eighteen hundred and sixty-two, for the support of an agricultural college, and any lands or funds which have heretofore been or may hereafter be given or appropriated for educational purposes by the Congress of the United States, shall be applied as directed in the Acts appropriating the same: *Provided*, That the General Assembly shall, as soon as practicable, wholly separate Claflin College from Claflin University, and provide for a separate corps of professors and instructors therein, representation to be given to men and women of the negro race; and it shall be the Colored Normal, Industrial, Agricutural and Mechanical College of this State.

State University.

Clemson Agricultural College.

Land script.

Claflin University.

Colored Normal, Industrial, Agricultural and Mechanical College.

Property or credit of State shall not benefit sectarian institutions.

SECTION 9. The property or credit of the State of South Carolina, or of any County, city, town, township, school district, or other subdivision of the said State, or any public money, from whatever source derived, shall not, by gift, donation, loan, contract, appropriation, or otherwise, be used, directly or indirectly, in aid or maintenance of any college, school, hospital, orphan house, or other institution, society or organization, of whatever kind, which is wholly or in part under the direction or control of any church or of any religious or sectarian denomination, society or organization.

Gifts for educational purposes.

SECTION 10. All gifts of every kind for educational purposes, if accepted by the General Assembly, shall be applied and used for the purposes designated by the giver, unless the same be in conflict with the provisions of this Constitution.

Gifts to State.

SECTION 11. All gifts to the State where the purpose is not designated, all escheated property, the net assets or funds of all estates or copartnerships in the hands of the Courts of the State where there have been no claimants for the same within the last seventy years, and other money coming into the Treasury of the State by reason of the twelfth Section of an Act entitled "An Act to provide a mode of distribution of the moneys as direct tax from the citizens of this State by the United States in trust to the State of South Carolina," approved the twenty-fourth day of December, in the year eighteen hundred and ninety-one, together with such other means as the General Assembly may provide, shall be securely invested as the State School Fund, and the annual income thereof shall be apportioned by the General Assembly for the purpose of maintaining the public schools.

Assets of estates or copartnerships.

Direct tax.

State school fund.

Income from sale or licenses for sale of liquors.

SECTION 12. All the net income to be derived by the State from the sale or license for the sale of spirituous, malt, vinous and intoxicating liquors and beverages, not including so much thereof as is now or may hereafter be allowed by law to go to the Counties and municipal corporations of the State, shall be applied annually in aid of the supplementary taxes provided for in the sixth Section of this Article; and if after said application there should be a surplus, it shall be devoted to public school purposes, and apportioned as the General Assembly may determine: *Provided, however*, That the said supplementary taxes shall only be levied when the net income aforesaid from the sale or license for the sale of alcoholic liquors or beverages are not sufficient to meet and equalize the deficiencies for which the said supplementary taxes are provided.

ARTICLE XII.

CHARITABLE AND PENAL INSTITUTIONS.

Institutions for blind, insane, deaf and dumb.

SECTION 1. Institutions for the care of the insane, blind, deaf and dumb and the poor shall always be fostered and supported by

this State, and shall be subject to such regulations as the General Assembly may enact.

State Hospital for Insane, officers of.

SECTION 2. The Regents of the State Hospital for the Insane and the Superintendent thereof, who shall be a physician, shall be appointed by the Governor, by and with the advice and consent of the Senate. All other physicians, officers and employees of the Hospital shall be appointed by the Regents, unless otherwise ordered by the General Assembly.

County poor.

SECTION 3. The respective Counties of this State shall make such provision as may be determined by law for all those inhabitants who by reason of age, infirmities and misfortune may have a claim upon the sympathy and aid of society.

Directors of benevolent and penal State institutions

SECTION 4. The Directors of the benevolent and penal State institutions which may be hereafter created shall be appointed or elected as the General Assembly may direct.

Directors of Penitentiary.

SECTION 5. The Directors and Superintendent of the Penitentiary shall be appointed or elected as the General Assembly may direct.

Convicts sentenced to hard labor.

SECTION 6. All convicts sentenced to hard labor by any of the Courts in this State may be employed upon the public works of the State or of the Counties and upon the public highways.

Reformatory for juvenile offenders.

SECTION 7. Provision may be made by the General Assembly for the establishment and maintenance by the State of a Reformatory for juvenile offenders separate and apart from hardened criminals.

Vacancies.

SECTION 8. The Governor shall have power to fill all vacancies that may occur in the offices aforesaid, except where otherwise provided for, with the power of removal until the next session of the General Assembly and until a successor or successors shall be appointed and confirmed.

Control of convicts.

SECTION 9. The Penitentiary and the convicts thereto sentenced shall forever be under the supervision and control of officers employed by the State; and in case any convicts are hired or farmed out, as may be provided by law, their maintenance, support, medical attendance and discipline shall be under the direction of officers detailed for those duties by the authorities of the Penitentiary.

ARTICLE XIII.

MILITIA.

Militia.

SECTION 1. The militia of this State shall consist of all able-bodied male citizens of the State between the ages of eighteen and forty-five years, except such persons as are now or may be exempted by the laws of the United States or this State, or who from religious scruples may be averse to bearing arms, and shall be organized, officered, armed, equipped and disciplined as the General Assembly may by law direct.

When exempt from arrest.

SECTION 2. The volunteer and militia forces shall (except for treason, felony and breach of the peace) be exempt from arrest by warrant or other process while in active service or attending muster or the election of officers, or while going to or returning from either of the same.

Governor may call out.

SECTION 3. The Governor shall have the power to call out the volunteer and militia forces, either or both, to execute the laws, repel invasions, suppress insurrections and preserve the public peace.

Adjutant and Inspector-General.

SECTION 4. There shall be an Adjutant and Inspector General elected by the qualified electors of the State at the same time and in the same manner as other State officers, who shall rank as Brigadier General, and whose duties and compensation shall be prescribed by law. The Governor shall, by and with the advice and consent of the Senate, appoint such other staff officers as the General Assembly may direct.

Staff officers.

Pensions.

SECTION 5. The General Assembly is hereby empowered and required, at its first session after the adoption of this Constitution, to provide such proper and liberal legislation as will guarantee and secure an annual pension to every indigent or disabled Confederate soldier and sailor of this State and of the late Confederate States who are citizens of this State, and also to the indigent widows of Confederate soldiers and sailors.

ARTICLE XIV.

EMINENT DOMAIN.

Boundary rivers.

SECTION 1. The State shall have concurrent jurisdiction on all rivers bordering on this State, so far as such rivers shall form a common boundary to this and any other State bounded by the same; and they, together with all navigable waters within the limits of the State, shall be common highways and forever free, as well to the inhabitants of this State as to the citizens of the United States, without any tax or impost therefor, unless the same be expressly provided for by the General Assembly.

Title to certain lands.

SECTION 2. The title to all lands and other property which have heretofore accrued to this State by grant, gift, purchase, forfeiture, escheats or otherwise shall vest in the State of South Carolina, the same as though no change had taken place.

Ultimate property in lands.

SECTION 3. The people of the State are declared to possess the ultimate property in and to all lands within the jurisdiction of the State; and all lands the title to which shall fail from defect of heirs shall revert or escheat to the people.

ARTICLE XV.

IMPEACHMENT.

Power of impeachment.

SECTION 1. The House of Representatives shall have the sole power of impeachment. A vote of two-thirds of all the members elected shall be required for an impeachment. Any officer impeached shall thereby be suspended from office until judgment in the case shall have been pronounced; and the office shall be filled during the trial in such manner as may be provided by law.

Officer impeached.

Senate try impeachment.

SECTION 2. All impeachments shall be tried by the Senate, and when sitting for that purpose they shall be under oath or affirmation. No person shall be convicted except by a vote of two-thirds of all the members elected. When the Governor is impeached, the Chief Justice of the Supreme Court, or if he be disqualified, the Senior Justice shall preside, with a casting vote in all preliminary questions.

Chief Justice preside.

Officers liable to.

SECTION 3. The Governor and all other executive and judicial officers shall be liable to impeachment; but judgment in such cases shall not extend further than removal from office. The persons convicted shall, nevertheless, be liable to indictment, trial and punishment according to law.

Removal of officers.

SECTION 4. For any wilful neglect of duty, or other reasonable cause, which shall not be sufficient ground of impeachment, the Governor shall remove any executive or judicial officer on the address of two-thirds of each house of the General Assembly: *Provided*, That the cause or causes for which said removal may be required shall be stated at length in such address, and entered on the Journals of each house: *And provided, further*, That the officer intended to be removed shall be notified of such cause or causes, and shall be admitted to a hearing in his own defence, or by his counsel, or by both, before any vote for such address; and in all cases the vote shall be taken by yeas and nays, and be entered on the Journal of each house respectively.

ARTICLE XVI.

AMENDMENT AND REVISION OF THE CONSTITUTION.

Amendments.

SECTION 1. Any amendment or amendments to this Constitution may be proposed in the Senate or House of Representatives. If the same be agreed to by two-thirds of the members elected to each house, such amendment or amendments shall be entered on the Journals respectively, with the yeas and nays taken thereon; and the same shall be submitted to the qualified electors of the

State at the next general election thereafter for Representatives; and if a majority of the electors qualified to vote for members of the General Assembly, voting thereon, shall vote in favor of such amendment or amendments, and a majority of each branch of the next General Assembly shall, after such an election and before another, ratify the same amendment or amendments, by yeas and nays, the same shall become part of the Constitution: *Provided*, That such amendment or amendments shall have been read three times, on three several days, in each house.

Two or more.

SECTION 2. If two or more amendments shall be submitted at the same time, they shall be submitted in such manner that the electors shall vote for or against each of such amendments separately.

Constitutional Convention.

SECTION 3. Whenever two-thirds of the members elected to each branch of the General Assembly shall think it necessary to call a Convention to revise, amend or change this Constitution, they shall recommend to the electors to vote for or against a Convention at the next election for Representatives; and if a majority of all the electors voting at said election shall have voted for a Convention, the General Assembly shall, at its next session, provide by law for calling the same; and such Convention shall consist of a number of members equal to that of the most numerous branch of the General Assembly.

ARTICLE XVII.

MISCELLANEOUS MATTERS.

Qualification of officers.

SECTION 1. No person shall be elected or appointed to any office in this State unless he possess the qualifications of an elector: *Provided*, The provisions of this Section shall not apply to the offices of State Librarian and Departmental Clerks, to either of which offices any woman, a resident of the State two years, who has attained the age of twenty-one years, shall be eligible.

Claims against State.

SECTION 2. The General Assembly may direct by law, in what manner claims against the State may be established and adjusted.

Divorces.

SECTION 3. Divorces from the bonds of matrimony shall not be allowed in this State.

Supreme Being.

SECTION 4. No person who denies the existence of a Supreme Being shall hold any office under this Constitution.

Public printing.

SECTION 5. The printing of the laws, journals, bills, legislative documents and papers for each branch of the General Assembly, with the printing required for the Executive and other de-

partments of the State, shall be let, on contract, in such manner as shall be prescribed by law.

Removal of causes.

SECTION 6. The General Assembly shall provide for the removal of all causes which may be pending when this Constitution goes into effect to Courts created by the same.

Lotteries.

SECTION 7. No lottery shall ever be allowed, or be advertised by newspapers, or otherwise, or its tickets be sold in this State; and the General Assembly shall provide by law at its next session for the enforcement of this provision.

Gambling and betting.

SECTION 8. It shall be unlawful for any person holding an office of honor, trust or profit to engage in gambling or betting on games of chance; and any such officer, upon conviction thereof, shall become thereby disqualified from the further exercise of the functions of his office, and the office of said person shall become vacant, as in the case of resignation or death.

Property of married women.

SECTION 9. The real and personal property of a woman held at the time of her marriage, or that which she may thereafter acquire, either by gift, grant, inheritance, devise or otherwise, shall be her separate property, and she shall have all the rights incident to the same to which an unmarried woman or a man is entitled. She shall have the power to contract and be contracted with in the same manner as if she were unmarried.

Laws now of force.

SECTION 10. All laws now in force in this State and not repugnant to this Constitution shall remain and be enforced until altered or repealed by the General Assembly, or shall expire by their own limitations.

SECTION 11. That no inconvenience may arise from the change in the Constitution of this State, and in order to carry this Constitution into complete operation, it is hereby declared:

Laws now of force.

First. That all laws in force in this State, at the time of the adoption of this Constitution, not inconsistent therewith and constitutional when enacted, shall remain in full force until altered or repealed by the General Assembly or expire by their own limitation.

Ordinances.

All ordinances passed and ratified at this Convention shall have the same force and effect as if included in and constituting a part of this Constitution.

Writs, actions, &c.

Second. All writs, actions, causes of action, proceedings, prosecutions, and rights of individuals, of bodies corporate and of the State, when not inconsistent with this Constitution, shall continue as valid.

Laws inconsistent with Constitution.

Third. The provisions of all laws which are inconsistent with this Constitution shall cease upon its adoption, except that all laws which are inconsistent with such provisions of this Constitution as require legislation to enforce them shall remain in force until such legislation is had.

Fines, &c., accruing.

Fourth. All fines, penalties, forfeitures and escheats accruing to the State of South Carolina under the Constitution and laws heretofore in force shall accrue to the use of the State of South

Carolina under this Constitution, except as herein otherwise provided.

Recognizances, &c.

Fifth. All recognizances, obligations and all other instruments entered into or executed before the adoption of this Constitution to the State, or to any County, township, city or town therein, and all fines, taxes, penalties and forfeitures due or owing to this State, or to any County, township, city or town therein, and all writs, prosecutions, actions and proceedings, except as herein otherwise provided, shall continue and remain unaffected by the

Indictments.

adoption of this Constitution. All indictments which shall have been found, or may hereafter be found, for any crime or offence committed before the adoption of this Constitution may be prosecuted as if no change had been made, except as otherwise provided herein.

All officers hold over.

Sixth. All officers, State, executive, legislative, judicial, circuit, district, County, township and municipal, who may be in office at the adoption of this Constitution, or who may be elected before the election of their successors as herein provided, shall hold their respective offices until their terms have expired and until their successors are elected or appointed and qualified as provided in this Constitution, unless sooner removed as may be provided by

Compensation.

law; and shall receive the compensation now fixed by the Statute Laws in force at the adoption of this Constitution.

Elections.

Seventh. At all elections held for members of the General Assembly in case of a vacancy, or for any other office, State, County or municipal, the qualifications of electors shall remain as they were under the Constitution of eighteen hundred and sixty-eight until the first day of November, in the year eighteen hundred and ninety-six.

Takes effect.

Eighth. This Constitution, adopted by the people of South Carolina in Convention assembled, shall be in force and effect from and after the thirty-first day of December, in the year eighteen hundred and ninety-five.

Constitution of 1868 repealed.

Ninth. The provisions of the Constitution of eighteen hundred and sixty-eight and amendments thereto are repealed by this Constitution, except when re-ordained and declared herein.

Done in Convention in Columbia on the fourth day of December, in the year of our Lord one thousand eight hundred and ninety-five.

JOHN GARY EVANS,
President of the Convention.
IRA B. JONES,
Vice President of the Convention.

Attest:

S. W. VANCE,
Secretary of the Convention.

DELEGATES FROM ABBEVILLE:

FRANK B. GARY.
ROBERT R. HEMPHILL.
J. C. KLUGH.
I. H. McCALLA.
R. F. McCASLAN.
W. C. McGOWAN.

DELEGATES FROM AIKEN:

D. S. HENDERSON.
R. L. GUNTER.
F. P. WOODWARD.

DELEGATES FROM ANDERSON:

J. E. BREAZEALE.
GEO. E. PRINCE.
J. M. SULLIVAN.
D. H. RUSSELL.
J. PERRY GLENN.
L. D. HARRIS.

DELEGATES FROM BARNWELL:

W. C. SMITH.
C. M. HIERS.
A. HOWARD PATTERSON.
ROBERT ALDRICH.
G. DUNCAN BELLINGER.
GEO. H. BATES.

DELEGATES FROM BEAUFORT:

None.

DELEGATES FROM BERKELEY:

E. J. DENNIS.
J. B. MORRISON.
H. H. MURRAY.
JAS. B. WIGGINS.
R. C. McMAKIN.
A. H. DeHAY.

DELEGATES FROM CHARLESTON:

JULIAN MITCHELL.
J. N. NATHANS.
W. St. JULIEN JERVEY.
GEO. F. von KOLNITZ, Jr.
J. P. K. BRYAN.
JOS. L. OLIVER.
WILLIAM MOSELEY FITCH.

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DELEGATES FROM CHESTER:

J. L. GLENN.
T. J. CUNNINGHAM.
R. O. ATKINSON.
GEORGE WILLIAMS GAGE.

DELEGATES FROM CHESTERFIELD:

E. J. KENNEDY.
E. N. REDFEARN.
F. P. TAYLOR.

DELEGATES FROM CLARENDON:

DANIEL J. BRADHAM.
JOSEPH S. CANTEY.
JOHN W. KENNEDY.
*J. M. SPROTT.

DELEGATES FROM COLLETON:

D. H. BEHRE.
L. E. PARLER.
C. W. GARRIS.
M. R. COOPER.
M. P. HOWELL.

DELEGATES FROM DARLINGTON:

J. O. A. MOORE.
HENRY CASTLES BURN.
J. N. PARROTT.

DELEGATES FROM EDGEFIELD:

B. R. TILLMAN.
W. J. TALBERT.
W. H. TIMMERMAN.
G. D. TILLMAN.
J. C. SHEPPARD.
R. B. WATSON.

DELEGATES FROM FAIRFIELD:

G. W. RAGSDALE.
W. L. ROSBOROUGH.
THOS. W. BRICE.

DELEGATES FROM FLORENCE:

R. M. McGOWAN.
W. F. CLAYTON.
BROWN B. McWHITE.
*J. O. BYRD.

DELEGATES FROM GEORGETOWN:

I. HARLESTON READ.
E. F. MATHEWS.

*Died during session.

55

DELEGATES FROM GREENVILLE:

J. WALTER GRAY.
G. G. WELLS.
J. THOMAS AUSTIN.
HUGH M. BARTON.
HUGH B. BUIST.
HENRY J. HAYNSWORTH.

DELEGATES FROM HAMPTON:

WILLIAM J. GOODING.
CHARLES J. C. HUTSON.
AMOS J. HARRISON.

DELEGATES FROM HORRY:

JOHN P. DERHAM.
J. A. McDERMOTTE.
JEREMIAH SMITH.

DELEGATES FROM KERSHAW:

J. W. FLOYD.
C. L. WINKLER.
S. T. HAY.

DELEGATES FROM LANCASTER:

J. N. ESTRIDGE.
JNO. W. HAMEL.

DELEGATES FROM LAURENS:

ALEX. J. SMITH.
R. L. HENRY.
J. H. WHARTON.

DELEGATES FROM LEXINGTON:

C. M. EFIRD.
J. L. SHULER.
E. L. LYBRAND.

DELEGATES FROM MARION:

W. J. MONTGOMERY.
J. EDWIN ELLERBE.
E. B. BERRY.
JAMES D. MONTGOMERY.

DELEGATES FROM MARLBORO:

THOMAS EDWARD DUDLEY.
W. DeWITT EVANS.
THOS. IRBY ROGERS.
*ROBERT HAYNE HODGES.

*Died during session.

DELEGATES FROM NEWBERRY:

GEORGE JOHNSTONE.
J. A. SLIGH.
GEO. S. MOWER.
JOS. L. KEITT.

DELEGATES FROM OCONEE:

J. C. ALEXANDER.
O. M. DOYLE.
WM. J. STRIBLING.

DELEGATES FROM ORANGEBURG:

I. W. BOWMAN.
L. S. CONNOR.
E. H. HOUSER.
OSCAR R. LOWMAN.
A. K. SMOKE.
J. WM. STOKES.

DELEGATES FROM PICKENS:

WM. THOS. FIELD.
WM. THOS. BOWEN.
R. FRANK SMITH.

DELEGATES FROM RICHLAND:

JOHN T. SLOAN.
JOHN JOSEPH McMAHAN.
WILIE JONES.
H. C. PATTON.

DELEGATES FROM SPARTANBURG:

C. A. BARRY.
M. O. ROWLAND.
W. T. BOBO.
W. E. CARVER.
A. S. WATERS.
T. EARLE JOHNSON.
STANYARNE WILSON.

DELEGATES FROM SUMTER:

T. B. FRASER.
RICHARD D. LEE.
GEO. P. McKAGEN, SR.
SHEPARD NASH.
JAS. H. SCARBOROUGH.
R. P. STACKHOUSE.

DELEGATES FROM UNION:

JAMES T. DOUGLASS.
WM. A. NICHOLSON.
C. H. PEAKE.
J. C. OTTS.

DELEGATES FROM WILLIAMSBURG:

S. W. GAMBLE.
THOS. M. GILLAND.
GEORGE J. GRAHAM.
WM. R. SINGLETARY.

DELEGATES FROM YORK:

A. H. WHITE.
W. BLACKBURN WILSON.
J. FRANK ASHE.

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ORDINANCES

PASSED BY THE

South Carolina Constitutional Convention

OF 1895.

THE STATE OF SOUTH CAROLINA:

At a Convention of the people of the State of South Carolina begun and holden at Columbia on the tenth day of September, in the year of our Lord one thousand eight hundred and ninety-five, and thence continued by divers adjournments to the fourth day of December, in the year of our Lord one thousand eight hundred and ninety-five.

AN ORDINANCE

TO ESTABLISH A NEW JUDICIAL AND ELECTION COUNTY FROM A PORTION OF THE TERRITORY OF EDGEFIELD COUNTY, TO BE CALLED SALUDA, WITH BOUNDARIES AS HEREINAFTER DESCRIBED.

We, the people of the State of South Carolina, by our delegates in Convention assembled, do ordain:

SECTION 1. That a new judicial and election County, which shall be known as Saluda County, shall be formed, and is hereby authorized to be formed, with the following boundaries, to wit:

Beginning at the centre of Big Saluda River at a point opposite the corner of Edgefield and Lexington Counties, thence the Edgefield and Lexington line to the corner of Lexington and Aiken Counties, thence the Edgefield and Aiken line to a point three miles north of where the public road crosses said line near Lybrand's old mill, thence a straight line to ten-mile post on public highway leading from Edgefield to Columbia near the residence of J. W. L. Bartley, thence a straight line to the junction of the public road leading from Pleasant Cross with the Long Cane road near Wm. Lott's, thence by the Long Cane road to Matt. Mathis' Cross Roads, thence a straight line to Owdom's post-office, thence a straight line to Little Red Hill school house near Dr. Landrum's old place, thence a straight line to a point on the northwestern line of Pine Grove Township, one mile north of Double Bridges, thence along the northwestern boundary of Pine Grove Township, to the point on the old Charleston and Cambridge road where it crosses Halfway Swamp Creek, thence down the middle of Halfway Swamp Creek to a point in the middle of Saluda River opposite the mouth of said creek, thence down the middle of Big Saluda River to

the initial point; and the territory embraced within the said lines shall be known as the County of Saluda.

SECTION 2. That J. H. Edwards, B. W. Crouch, Alvin Ethredge, P. C. Stevens, B. L. Canghman, James P. Bean, C. P. Boozer, J. R. Watson, and J. B. Suddath be, and are hereby, appointed Commissioners to have the boundaries of said new County Saluda as above indicated, surveyed and properly marked, as well as to designate and establish the County seat: *Provided*, That the County seat shall be located within three (3) miles of the geographical centre of the County, to be ascertained by drawing diagonal lines from the four corners of the County and taking the point of crossing as such centre, the particular site to be decided by vote of the people in said County at an election which shall be held in accordance with law by order of the Governor; and to provide suitable buildings for the several Court and County officers, and to select and purchase or procure sites for the usnal public buildings, and contract for and superintend the erection of the court house and jail thereon, and said public buildings shall be built at the expense of the citizens of the said County of Saluda; and to meet the said demand a special tax, not exceeding two mills on the dollar of the assessed value of real and personal property in said County, be levied by the proper County officials hereinafter provided for, in accordance with the laws now in force regulating the assessment and collection of taxes.

SECTION 3. That an election shall be held in the County of Saluda on Tuesday following the first Monday in November, A. D. 1896, or on such other day as may be provided by law hereinafter, for members of the General Assembly and for the regular County officers provided for by the Constitution and laws of the State.

SECTION 4. That until the next apportionment of Representatives the said County of Saluda shall be entitled to two Representatives.

SECTION 5. That the voting precincts heretofore established by law in that portion of Edgefield County embraced in the limits of Saluda County shall be the precincts of Saluda County.

SECTION 6. That the County of Saluda be, and is hereby, attached to the Second Congressional District, and shall form part and parcel of the Fifth Jndicial Circuit, and that the regular terms of the Courts of General Sessions and Common Pleas shall be held at such times as shall be fixed by law; and that the Trial Justices located in that portion of Edgefield County embraced in the limits of Salnda County shall be continued in office until their successors shall have been appointed and qualified: *Provided, however*, That from and after the time this ordinance goes into effect they shall be confined and limited in their official capacity, duty and power to said limits of Saluda County.

SECTION 7. That from and after the first day of December, A. D. 1896, all suits pending in the Courts of Edgefield of which the defendants reside in that portion of said County now established as the County of Saluda, and all indictments pending in the said County of Edgefield where the offence was committed in that part of said County now established as the County of Saluda, shall be transferred to the

Calendars of the Courts of the said County of Saluda; and all records, commissions and other papers belonging to any of the said suits or indictments, together with all the legal incidents thereto appertaining, shall be transferred to the Clerk of the Court of the said County of Saluda.

SECTION 8. That the Governor be, and is hereby, authorized and empowered to appoint a Commission of five persons, two of whom shall be residents of the County of Edgefield, two residents of the new County of Saluda, and one resident of some other County of the State, which said Commission shall divide and apportion between the two Counties herein provided for the present lawful *bona fide* indebtedness of the old County of Edgefield, having regard to the amount of unpaid taxes due to the said County of Edgefield.

SECTION 9. The General Assembly may pass any Act not inconsistent with this Ordinance to carry the same into effect.

Done in Columbia, the sixteenth day of October, in the year of our Lord, one thousand eight hundred and ninety-five.

JNO. GARY EVANS,
President of Convention.

Attest:
S. W. VANCE,
Secretary of Convention.

THE STATE OF SOUTH CAROLINA:

At a Convention of the people of the State of South Carolina begun and holden at Columbia on the tenth day of September, in the year of our Lord one thousand eight hundred and ninety-five, and thence continued by divers adjournments to the fourth day of December, in the year of our Lord one thousand eight hundred and ninety-five.

AN ORDINANCE

TO PROVIDE AN ALPHABETICAL INDEX AND MARGINAL NOTES TO THE CONSTITUTION AND ORDINANCES OF THE CONVENTION OF THE YEAR 1895.

Whereas, it is desirable to facilitate and afford easy reference to the provisions of the Constitution of the year 1895; now,

Be it ordained by the people of the State of South Carolina, in Convention assembled, and by the authority of the same:

SECTION 1. That C. M. Efird is hereby authorized and appointed to prepare a complete alphabetical index, with marginal notes, of the Constitution and Ordinances adopted by this Convention, to form a part of this Constitution and Ordinances when printed, and that he receive as compensation therefor fifty dollars, the same to be paid him by the State Treasurer upon the warrant of the Comptroller-General.

JNO. GARY EVANS,
President.

Attest:
S. W. VANCE,
Secretary of Convention.

THE STATE OF SOUTH CAROLINA.

At a Convention of the people of the State of South Carolina, begun and holden at Columbia on the tenth day of Septeniber, in the year of our Lord one thousand eight hundred and ninety-five, and thence continued by divers adjournments to the fourth day of December, in the year of our Lord one thousand eight hundred and ninety-five.

AN ORDINANCE

TO PROVIDE FOR THE PAYMENT OF INTEREST ON THE PUBLIC DEBT OF THE STATE OF SOUTH CAROLINA TO BECOME DUE ON THE FIRST DAY OF JANUARY, A. D. 1896, AND TO REQUIRE THE GENERAL ASSEMBLY TO MAKE APPROPRIATIONS FOR THAT PURPOSE.

We, the people of South Carolina, by our delegates in Convention assembled, do ordain:

SECTION 1. That the Governor and State Treasurer be, and are hereby, authorized to make arrangements for the payment of the semi-annual interest due on the public debt of the State on the first day of January, A. D. 1896, and, if necessary, in anticipation of the collection of taxes, they are hereby authorized to borrow for that purpose a sum not exceeding one hundred and sixty thousand dollars.

SECTION 2. That the General Assembly, at its next session, is hereby required and directed to make an appropriation for the payment of said loan.

Done in Convention, in Columbia, on the third day of December, A. D. 1895.

JNO. GARY EVANS,
President of Convention.

Attest:

S. W. VANCE,
Secretary of Convention.

THE STATE OF SOUTH CAROLINA:

At a Convention of the people of the State of South Carolina, begun and holden at Columbia on the tenth day of September, in the year of our Lord one thousand eight hundred and ninety-five, and thence continued by divers adjournments to the fourth day of December, in the year of our Lord one thousand eight hundred and ninety-five.

AN ORDINANCE

TO AUTHORIZE THE GENERAL ASSEMBLY TO PROVIDE FOR A SINKING FUND IN THE SEVERAL COUNTIES OF THE STATE TO ENABLE THE SAME TO DO BUSINESS ON A CASH BASIS.

Whereas in most, if not in all, of the Counties of the State the taxes are never realized until a year after the levy, and consequently the contracts for ordinary County purposes and for the running of the schools have to be made on a credit instead of a cash basis; and whereas this is an evil that ought to be remedied, Therefore,

Be it ordained by the people of the State of South Carolina, in Convention assembled, and by the authority of the same:

SECTION 1. That the General Assembly may provide for an annual tax levy, not to exceed one-half of one mill, in each County not now on a cash basis. The proceeds of all such levies shall be used as a sinking fund for each and every County in which it is levied and collected, and shall be invested or paid out as the General Assembly shall direct, until an amount sufficient shall have been collected to put such Counties on a cash basis, then such annual levies shall cease.

Done in Convention, in Columbia, on the third day of December, A. D. 1895.

JNO. GARY EVANS,
President of Convention.

Attest:

S. W. VANCE,
Secretary of Convention.

88

THE STATE OF SOUTH CAROLINA.

At a Convention of the people of the State of South Carolina, begun and holden at Columbia on the tenth day of September, in the year of our Lord one thousand eight hundred and ninety-five, and thence continued by divers adjournments to the fourth day of December, in the year of our Lord one thousand eight hundred and ninety-five.

AN ORDINANCE

IN REGARD TO PAYING THE STATE PRINTER.

Be it ordained by the people of the State of South Carolina, in Convention assembled:

That the Comptroller-General be authorized to audit the accounts of the State Printer for work done for the Convention before or after the adjournment *sine die*, and to draw his warrant upon the State Treasurer therefor upon the production of the proper vouchers.

Done in Convention, in Columbia, on the third day of December, A. D. 1895.

JNO. GARY EVANS,
President of Convention.

Attest:
S. W. VANCE,
Secretary of Convention.

THE STATE OF SOUTH CAROLINA.

At a Convention of the people of the State of South Carolina begun and holden at Columbia on the tenth day of September, in the year of our Lord one thousand eight hundred and ninety-five, and thence continued by divers adjournments to the fourth day of December, in the year of our Lord one thousand eight hundred and ninety-five.

AN ORDINANCE

TO PROVIDE FOR THE PAY OF THE COMMISSIONERS AND MANAGERS OF ELECTION.

Be it ordained by the people of the State of South Carolina:

That the General Assembly, at its next session, shall provide reasonable compensation for the Commissioners, Managers and other officers, who conducted the election for members of this Constitutional Convention.

Done in Convention, in Columbia, on the third day of December, A. D. 1895.

JNO. GARY EVANS,
President of Convention.

Attest:
S. W. VANCE,
Secretary of Convention.

89

THE STATE OF SOUTH CAROLINA:

At a Convention of the people of the State of South Carolina begun and holden at Columbia on the tenth day of September, in the year of our Lord one thousand eight hundred and ninety-five, and thence continued by divers adjournments to the fourth day of December, in the year of our Lord one thousand eight hundred and ninety-five.

AN ORDINANCE

TO PROVIDE THAT THE GENERAL ASSEMBLY MAY ENACT LAWS NECESSARY TO VALIDATE AND CARRY INTO EFFECT THE SUBSCRIPTIONS TO THE CAPITAL STOCK OF THE CAROLINA, KNOXVILLE AND WESTERN RAILROAD COMPANY, HERETOFORE VOTED FOR AND AUTHORIZED BY THE QUALIFIED ELECTORS OF GREENVILLE COUNTY.

We, the people of South Carolina, by our delegates in Convention assembled, do ordain:

SECTION 1. That nothing contained in the Constitution adopted by the people of South Carolina, now in Convention assembled, shall inhibit the General Assembly from enacting all laws necessary to validate and carry into effect the subscription to the capital stock of the Carolina, Knoxville and Western Railroad Company, heretofore voted for and authorized by the qualified electors of Greenville County: *Provided*, That said railroad company shall comply with all the conditions upon which the said bonds were originally voted: *And provided, further*, That the qualified electors of said County shall reaffirm the grant of authority to issue said bonds at an election called for the purpose within such time as the General Assembly may prescribe.

Done in Convention, in Columbia, on the third day of December, A. D. 1895.

JNO. GARY EVANS,
President of Convention.

Attest:
S. W. VANCE,
Secretary of Convention.

90

THE STATE OF SOUTH CAROLINA:

At a Convention of the people of the State of South Carolina begun and holden at Columbia on the tenth day of September, in the year of our Lord one thousand eight hundred and ninety-five, and thence continued by divers adjournments to the fourth day of December, in the year of our Lord one thousand eight hundred and ninety-five.

AN ORDINANCE

TO PROVIDE FOR THE PAYMENT OF THE PER DIEM AND MILEAGE OF DELEGATES, OFFICERS AND EMPLOYEES OF THE CONVENTION AND OTHER NECESSARY EXPENSES, AND TO REQUIRE THE GENERAL ASSEMBLY TO MAKE ADDITIONAL APPROPRIATIONS TO PAY THE SAME.

We, the people of South Carolina, by our delegates in Convention assembled, do ordain:

SECTION 1. That the amount of $30,000. if so much be necessary, in addition to the $30,000 appropriated by the last General Assembly, be, and is hereby, appropriated to pay the per diem and mileage of the delegates, officers and employees of the Convention and other necessary expenses.

SECTION 2. That the Governor and State Treasurer be, and they are hereby, authorized to borrow sufficient money to meet this additional appropriation, and the State Treasurer is hereby authorized to pay it out upon the warrants of the Comptroller-General, who is hereby required to issue his warrant or warrants for this additional appropriation, or so much thereof, as may be necessary to meet the purposes of this Ordinance.

SECTION 3. That the General Assembly is hereby required and directed, at its next session, to make an appropriation, sufficient to pay the amount of money the State Treasurer is herein authorized to borrow for the payment of the balance of the per diem and mileage of the delegates, officers and employees of the Convention, and other necessary expenses, after the exhaustion of the $30,000 already appropriated by the General Assembly.

Done in Convention, in Columbia, on the third day of December, A. D. 1895.

JNO. GARY EVANS,
President of Convention.

Attest:
S. W. VANCE,
Secretary of Convention.

91

THE STATE OF SOUTH CAROLINA:

At a Convention of the people of the State of South Carolina begun and holden at Columbia on the tenth day of September, in the year of our Lord one thousand eight hundred and ninety-five, and thence continued by divers adjournments to the fourth day of December in the year of our Lord one thousand eight hundred and ninety-five.

AN ORDINANCE

TO PROVIDE THAT THE GENERAL ASSEMBLY MAY ENACT LAWS NECESSARY TO VALIDATE AND CARRY INTO EFFECT SUBSCRIPTIONS TO THE CAPITAL STOCK OF CERTAIN RAILROAD COMPANIES, HERETOFORE VOTED BY THE COUNTY OF FAIRFIELD, AND TO VALIDATE AND AUTHORIZE THE ISSUE OF BONDS IN PAYMENT OF THE SAME.

Be it ordained by the people of South Carolina, in Convention assembled, That nothing contained in the Constitution adopted by the people of South Carolina, now in Convention assembled, shall prohibit the General Assembly from enacting laws necessary to validate and carry into effect the subscription to the capital stock of the Cape Fear and Cincinnati Railroad Company, and the subscription to the capital stock of the Wadesboro, Winnsboro and Camak Railroad Company, heretofore voted for and authorized by the qualified electors of Fairfield County, and to validate and authorize the issue of the bonds of said County in payment of the same: *Provided*, That the said railroad companies comply with all the conditions upon which said subscriptions and bonds were originally voted: *And provided, further*, That the qualified electors of said County reaffirm the grant of authority to issue said bonds in payment of said subscriptions to either or both of said railroad companies at the next general election for State and County officers.

Done in Convention, in Columbia, on the third day of December, A. D. 1895.

JNO. GARY EVANS,
President of Convention.

Attest:
S. W. VANCE,
Secretary of Convention.

92

THE STATE OF SOUTH CAROLINA :

At a Convention of the people of the State of South Carolina begun and holden at Columbia on the tenth day of September, in the year of our Lord one thousand eight hundred and ninety-five, and thence continued by divers adjournments to the fourth day of December, in the year of our Lord one thousand eight hundred and ninety-five.

AN ORDINANCE

FIXING THE PAY AND MILEAGE OF THE MEMBERS, OFFICERS AND EMPLOYEES OF THIS CONVENTION.

We, the people of South Carolina, in Convention assembled, do ordain:

SECTION 1. That the following sums, if so much be necessary, be, and the same are hereby, appropriated to pay the expenses of the Constitutional Convention from the tenth day of September, eighteen hundred and ninety-five, to the close of the session (except the time of the recess taken from the fourth day of October, eighteen hundred and ninety-five, to the fifteenth day of October, eighteen hundred and ninety-five,) to the close of the session, as follows: For the per diem of the members at two dollars, and an additional per diem of two dollars from the sixteenth day of October, eighteen hundred and ninety-five, to the end of the session; for the pay of S. W. Vance, Secretary of the Convention, six hundred dollars; for the pay of P. L. Melton, Assistant Secretary of the Convention, four dollars per day; for the pay of H. R. Flannigan, Second Assistant Secretary of the Convention, three dollars per day; for the pay of J. T. Gantt, Journal Clerk, three dollars per day and three dollars per day for indexing after adjournment, not to exceed twenty days, such number of days as are absolutely necessary to be certified to by the Secretary of the Convention; for the pay of D. H. Witherspoon, Bill Clerk, three dollars per day; for the pay of A. H. Dagnall, Reading Clerk, three dollars per day; for the pay of E. P. Jennings, Postal Clerk, two dollars per day; for the pay of R. M. Jolly, Doorkeeper, two dollars and fifty cents per day; for the pay of Joseph Witherspoon, Assistant Doorkeeper, two dollars per day; for the pay of W. J. Shelton, Gallery Doorkeeper, two dollars per day; for the pay of Glenn Smith, James Robinson, J. B. Hughes, Belton Drafts Caughman, J. W. McCalla, U. R. Brooks, Jr., Pages of the Constitutional Convention, each one dollar and fifty cents per day; for the pay of W. W. Lazenbury, West Oliphant, Damon Cantey, Council Cross, James Adamson and Aaron Owens, Laborers, each one dollar and fifty cents per day; for the pay of W. Boyd Evans, Clerk of Judiciary Committee, two dollars per day; for the pay of Benjamin W. Crouch, Clerk of the Suffrage Committee, two dollars per day; for the pay of Levi David, Clerk of the Educational Committee, two dollars per day; for the pay of A. R. Harmon, Clerk of the Executive Committee, two dollars per day; for the pay of J. W. Wessinger, Clerk of the Legislative Committee, two dollars per day; for the pay

of R. L. Freeman, Clerk of the Committee on Finance and Taxation, two dollars per day; for the pay of G. P. Smith, Clerk of the Committee on Declaration of Rights, two dollars per day; for the pay of E. W. Townsend, Clerk of the Committee on Miscellaneous Matters, two dollars per day; for the pay of G. H. Charles, Clerk of the Committee on Counties and County Government, two dollars per day; for the pay of W. H. Yeldell, Chief Clerk of the Engrossing Department, three dollars per day; for the pay of N. H. Stansell, Sergeant-at-Arms, three dollars per day; for the pay of the two Chaplains of the Convention, seventy-five dollars each.

SECTION 2. *Be it further ordained*, That the mileage of the members of the Convention shall be five cents per mile, to and from the Convention by the usual routes. *And be it further ordained*, That according to a resolution passed by the Constitutional Convention on the twenty-first day (Thursday, October third, eighteen hundred and ninety-five), the members, officers and employees of this Convention be paid five cents per mile going to their homes during the recess and returning therefrom.

SECTION 3. *Be it further ordained*, That the following sums, if so much be necessary, be appropriated: To pay for the printing connected with the Convention, ——— dollars; for lights, $700; for stationery, ——— dollars.

SECTION 4. The disbursing officer of this Convention shall, upon the adjournment thereof, or as soon thereafter as practicable, issue to the widows of the late J. O. Byrd, R. H. Hodges and J. M. Sprott, members of this Convention, who died while in attendance thereon, pay certificates for the amounts which would have been due their respective husbands had they lived and been in attendance upon this body when it adjourned.

SECTION 5. Each delegate, officer and employee be allowed mileage at five cents per mile going to his home and returning, for the recess from the twenty-seventh day of November to the third day of December; that no per diem be allowed for said recess to delegates, officers and employees, except to those who remained in Columbia sick during the recess and except those delegates who shall attend the meetings of the Committee on Order, Style and Revision, and the clerks employed by said Committee shall be paid four dollars per day.

Done in Convention, in Columbia, on the third day of December, A. D. 1895.

JNO. GARY EVANS,
President of Convention.

Attest:

S. W. VANCE,
Secretary of Convention.

94

THE STATE OF SOUTH CAROLINA:

At a Convention of the people of the State of South Carolina begun and holden at Columbia on the tenth day of September, in the year of our Lord one thousand eight hundred and ninety-five, and thence continued by divers adjournments to the fourth day of December, in the year of our Lord one thousand eight hundred and ninety-five.

AN ORDINANCE

TO PROVIDE THAT THE GENERAL ASSEMBLY MAY ENACT SUCH LAWS AS MAY BE NECESSARY TO VALIDATE AND CARRY INTO EFFECT SUBSCRIPTIONS TO THE CAPITAL STOCK OF CERTAIN RAILROAD COMPANIES, HERETOFORE VOTED BY THE COUNTY OF CHESTERFIELD AND BY THE CITY OF SPARTANBURG, RESPECTIVELY, AND TO VALIDATE AND AUTHORIZE THE ISSUE OF BONDS IN PAYMENT OF THE SAME.

Be it ordained by the people of South Carolina, in Convention assembled, That nothing in the Constitution ordained and established by the people of South Carolina, now in Convention assembled, shall prohibit the General Assembly from enacting such laws as may be necessary to validate and carry into effect the subscriptions to the capital stock of the Chesterfield and Lancaster Railroad Company, and to the Chesterfield and Kershaw Railroad Company, heretofore voted for and authorized by the qualified voters of Chesterfield County, and to validate and authorize the issue of the bonds of said County in payment of the same; or from enacting such laws as may be necessary to validate and carry into effect the subscription by the city of Spartanburg to the capital stock of the Spartanburg and Rutherfordton Railroad Company heretofore voted for and authorized by the qualified voters of the city of Spartanburg, and to validate and authorize the issue of the bonds of said city in payment of the same.

Done in Convention, in Columbia, on the twentieth day of November, A. D. 1895.

JNO. GARY EVANS,
President of Convention.

Attest:

S. W. VANCE,
Secretary of Convention.

95

THE STATE OF SOUTH CAROLINA:

At a Convention of the people of the State of South Carolina begun and holden at Columbia on the tenth day of September, in the year of our Lord one thousand eight hundred and ninety-five, and thence continued by divers adjournments to the fourth day of December, in the year of our Lord one thousand eight hundred and ninety-five.

AN ORDINANCE

TO POSTPONE THE NEXT REGULAR SESSION OF THE GENERAL ASSEMBLY FROM THE FOURTH TUESDAY IN NOVEMBER, 1895, TO THE SECOND TUESDAY IN JANUARY, 1896.

Be it ordained by the people of South Carolina, in Convention assembled, and by authority of the same, That the next regular session of the General Assembly of this State, appointed by law, to be held on the fourth Tuesday of November, in the year of our Lord one thousand eight hundred and ninety-five, be, and the same is hereby, postponed until the second Tuesday of January, in the year of our Lord one thousand eight hundred and ninety-six; and that the Governor of the State, be, and is hereby, authorized and empowered to issue his proclamation to that effect.

Done in Convention this eighteenth day of November, 1895.

JNO. GARY EVANS,
President of Convention.

Attest:

S. W. VANCE,
Secretary of Convention.

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TESTIMONY FOR THE RECORD

EZRA D. ROSENBERG
CO-DIRECTOR, VOTING RIGHTS PROJECT
LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW

U.S. SENATE
COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON THE CONSTITUTION

HEARING ON
"RESTORING THE VOTING RIGHTS ACT
AFTER *BRNOVICH* AND *SHELBY COUNTY*"

JULY 14, 2021

I. Introduction

My name is Ezra Rosenberg and I am the Co-Director of the Voting Rights Project of the Lawyers' Committee for Civil Rights Under Law ("Lawyers' Committee"). Thank you for the opportunity to submit this written testimony for the record regarding the consequences for voting rights flowing from the recent decision of the United States Supreme Court in *Brnovich v. Democratic National Committee*,[1] and the potential legislative responses to that decision.

Racial discrimination in voting diminishes our democracy. The Voting Rights Act of 1965 (the "Act" or the "VRA"), and particularly Section 2 and Section 5, have been indispensable tools in the fight against such discrimination. Section 5 has already been effectively eviscerated by the Supreme Court's decision in *Shelby County v. Holder*.[2] In my view, the *Brnovich* opinion, while not gutting Section 2, makes it unnecessarily more difficult for plaintiffs to bring Section 2 vote denial "results" cases, running directly counter to Congress' intent in first enacting the Act in 1965, and then in broadening the scope of Section 2 of the Act in 1982. In the context of the steps already taken or about to be taken by legislatures in states such as Georgia 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, the full protections intended by Congress when the VRA was first enacted are desperately needed today. Moreover, there is a legitimate concern that some state legislatures will be emboldened by their reading of *Brnovich*, and view it as a signal from the Court to take even more suppressive action. Congress should take immediate steps to reassert its intention to fully protect the voting rights of voters of color in Section 2 of the Voting Rights Act.

I come to these views after having devoted the bulk of the last decade litigating voting rights cases on behalf of voters of color for the Lawyers' Committee. The Lawyers' Committee is a national civil rights organization created at the request of President John F. Kennedy in 1963 to mobilize the private bar to confront issues of racial discrimination pro bono. In fact, I first became associated with the Lawyers' Committee when I was a partner of a large global law firm, and volunteered in 2011 to take on a voting rights case pro bono. That case was the challenge to Texas's strict photo ID law. After I retired from private practice in 2014, the Lawyers' Committee asked me to join their staff, where I have, as Co-Director of its Voting Rights Project since 2015, supervised the filings on behalf of voters and civil rights organizations in over 100 cases dealing with voting rights, many of them with claims brought under the Voting Rights Act.

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[1] U.S. Supreme Court no. 19-1257, decided July 1, 2021.

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

My experience with the challenge to Texas's Photo ID law heavily influences my views here today. In that case, we first intervened on behalf of our clients in the proceedings brought by the State of Texas to obtain preclearance from a federal court of its new photo ID requirements, as then required under Section 5 of the Voting Rights Act. The federal court refused to preclear the law,[3] but while Texas's appeal was pending, the Supreme Court issued its decision in *Shelby County* effectively gutting Section 5. The same day, Texas announced it would start implementing the new photo ID law, forcing the Lawyers' Committee and our clients, as well as other civil rights organizations and the Department of Justice to file suit under Section 2 of the Voting Rights Act.

That suit was successful, and Texas was forced to change its law, with the district court ruling – and the Fifth Circuit Court of Appeals affirming en banc – that Texas's photo ID law discriminated against Black and Latinx voters under the effects prong of Section 2.[4] But the case was hard-fought and one of the relatively small number of "vote denial" cases brought under Section 2 of the Voting Rights Act in the last few decades. Yet, had *Brnovich* been issued earlier, it is difficult to predict how the lower courts and the Fifth Circuit would have construed *Brnovich*. One thing is certain, however, the case would have been more difficult to prove and more costly to litigate.

This does not make sense. Since 1965, Section 2 of the Voting Rights Act has stood as a bulwark against racial discrimination in voting, particularly after the 1982 amendment that explicitly created results claims under Section 2. Since this Court's decision in *Shelby County*, Section 2 has become even more indispensable because it is the primary measure to challenge discriminatory voting changes. Congress originally enacted and 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 minority citizens' right to vote. Consistent with the text and purpose of the Act as amended, prior to *Brnovich*, the Supreme Court and several of the Circuit Courts of Appeal had adopted a standard to ensure the effective implementation of those protections. That standard recognized that the Act applies broadly to all voting procedures and policies that abridge the right to vote—whether expressly or subtly. The standard also recognized 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.[5]

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

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

[5] *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); *Veasey v. Abbott*, 830 F.3d 216, 244 (5th Cir. 2016) (en banc); *Ohio State Conf. of NAACP v. Husted*, 768 F.3d 524, 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).

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.

I cannot put it better than Justice Kagan, in her dissent to *Brnovich*:

> The Voting Rights Act of 1965 is an extraordinary law. Rarely has a statute required so much sacrifice to ensure its passage. Never has a statute done more to advance the Nation's ideals. And few laws are more vital in the current moment.

II. 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."[6] 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[,]"[7] prior to the VRA's passage, this language proved largely aspirational.[8]

Responding to the states' tenacious "ability . . . to stay one step ahead of federal law," Congress passed the VRA to provide a "new weapon[] against discrimination."[9] The Act "reflect[ed] Congress' firm intention to rid the country of racial

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[6] *South Carolina v. Katzenbach*, 383 U.S. 301, 308–09 (1966).

[7] *Lane v. Wilson*, 307 U.S. 268, 275 (1939)

[8] *See, e.g., Katzenbach*, 310–15 (describing pre-VRA efforts to enforce the Fifteenth Amendment).

[9] Armand Derfner, *Racial Discrimination and the Right to Vote*, 26 Vand. L. Rev. 523, 524–25, 550 (1973) (hereinafter *Right to Vote*).

discrimination in voting."[10] The essence of the VRA'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 States to vote on account of race or color."[11]

Notwithstanding Section 2's broad language, jurisdictions sought to evade its reach by placing "heavy emphasis on facially neutral techniques."[12] 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." [13] In one Mississippi county, voters were forced to "travel 100 miles roundtrip to register to vote."[14] In one Alabama county, "the only registration office in the county [was] closed weekends, evenings and lunch hours."[15] These regulations ostensibly governed the time, place, and manner of voting in a neutral way, but they "particularly handicap[ped] minorities."[16]

Against this backdrop, and responding to this Court's plurality decision in *City of Mobile v. Bolden*, which had read into Section 2 a "discriminatory purpose" element,[17] 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."[18] 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 minority voters so that they have less opportunity than white voters "to participate in the political process and to elect representatives of their choice."[19] By adopting this "results test," Congress captured

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[10] *Katzenbach*, 383 U.S. at 315.

[11] Voting Rights Act of Aug. 6, 1965, Pub. L. No. 89-110, 79 Stat. 437, 437.

[12] *Right to Vote*, *supra* at 552.

[13] *Id.* at 557–58.

[14] Steven L. Lapidus, *Eradicating Racial Discrimination in Voter Registration: Rights and Remedies Under the Voting Rights Act Amendments of 1982*, 52 Ford. L. Rev. 93, 93 (1983).

[15] *Id.* at 93–94.

[16] *Id.* at 96.

[17] 446 U.S. 55, 62 (1980).

[18] Voting Rights Act Amendments of 1982, Pub. L. No. 97-205, 96 Stat. at 131, 134 (emphasis added).

[19] *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 NAACP v. McCrory*, 831 F.3d 204, 220-21 (4th Cir. 2016).

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."[20]

Section 2 provides relief for both *vote dilution*—schemes that reduce the weight of minority votes—and *vote denial*—standards, practices, or procedures that impede minority citizens 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."[21]

Thirty-five years ago, in *Gingles v. Thornburg*,[22] 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 minority voters, 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,"[23] that accounts for the "totality of [the] circumstances."[24]

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."[25] 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."[26] These nine social and historical

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[20] S. Rep. No. 97-417, at 12 (1982), *reprinted in* 1982 U.S.C.C.A.N. 177, 189 ("Senate Report").

[21] *See* Richard Briffault, *Lani Guinier 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 "inconvenient location and hours of registration" and other restrictive practices that acted as "continued barriers" to racial minorities. H.R. Rep. No. 97-227, at 14, 17 (1981) ("House Report"). The Senate Judiciary Committee similarly identified states' "efforts to bar minority participation" through "registration requirements and purging of voters, changing the location of polling places[,] and insistence on retaining inconvenient voting and registration hours." Senate Report at 10 n.22. For example, a Georgia county "adopted a policy that it would no longer approve community groups' requests to conduct voter registration drives, even though only 24 percent of black eligible voters were registered, compared to 81 percent of whites." *Id.* at 11.

[22] 478 U.S. 30, 47 (1986).

[23] *Id.* at 79 (quotation marks omitted).

[24] 52 U.S.C. § 10301(b).

[25] 478 U.S. at 47.

[26] 478 U.S. at 36.

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).[27]

Since *Gingles*, four different Circuits addressing vote-denial cases have used the foundation laid in *Gingles* 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 minority voters ("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.[28] No other Circuit has put forth an alternative formulation.

The Section 2 results inquiry is complex and resource intensive to litigate. The "totality of circumstances" test set forth in the statute is fact-intensive by its own definition. The Senate Report supporting the 1982 amendment to Section 2 lists factors that courts have used as a starting point in applying the totality of circumstances test to include seven such factors (along with two factors plaintiffs have the option to raise).[29]

III. *Brnovich v. Democratic National Committee*

A. The Facts

That was the situation until *Brnovich*. In *Brnovich*, the Supreme 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-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 United States Court of Appeals for the Ninth Circuit had reversed, en banc, 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.

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[27] *Id.* at 36–37 (citing Senate Report at 28–29).

[28] *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); *Veasey v. Abbott*, 830 F.3d 216, 244 (5th Cir. 2016) (en banc); *Ohio State Conf. of NAACP v. Husted*, 768 F.3d 524, 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).

[29] *See Gingles*, 478 U.S. 30, 44-45 (1986).

As to the out-of-precinct policy, the Ninth Circuit identified several factors, acknowledged by the district court, leading to a higher rate of 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);[30] confusing placement of polling locations (indigenous populations in particular lived farther from their assigned polling places than did white voters,[31]); and high rates of residential mobility.[32] 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.[33]

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.[34] 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 minority voters.[35]

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 VRA. 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.[36]

B. The 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 provided 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.

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[30] *Brnovich v. Democratic National Committee*, Joint Appendix, at 590 (online at https://www.supremecourt.gov/DocketPDF/19/19-1257/162052/20201130133300128_19-1257%20-1258%20Joint%20Appendix.pdf).

[31] *Id.* at 592.

[32] *Id.* at 594.

[33] *Id.* at 595-96.

[34] *Id.* at 597.

[35] *Id.* at 598.

[36] Id. at 681.

I emphasize *Brnovich* does not spell the end of Section 2 cases. Rather, it unnecessarily and unreasonably makes it more difficult for civil rights plaintiffs 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*i is that "[i]n recent years, [Section 2 vote denial claims] have proliferated in the lower courts."[37] 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.[38] However, those briefs describe a total of perhaps 16 cases, dating back over 7 years, and only 3 of them led to a finding of Section 2 liability.

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 Supreme 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 courts were being overwhelmed by Section 2 vote denial cases. And when such cases are brought, courts have had no trouble applying the standard to separate discriminatory voting practices from benign election regulations. In short, the pre-existing standard had worked well.

2. *Brnovich* reads a remedial statute narrowly

One of the most important canons of statutory construction – and one that gives the greatest deference to congressional intent – is that remedial statutes are to be broadly construed,[39] and there are few statutes in this Nation's history more remedial than the Voting Rights Act of 1965. Yet, rather than read the Act expansively, the Court created new stringent guidelines, most prominently setting 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 touchstone of the *Brnovich* opinion is the Court's construction of the requirement in Section 2(b) that the political process be "equally open" as the "core"

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[37] *Brnovich v. Democratic National Committee*, 2021 WL 2690267, at *8 (2021).

[38] *Id.* at n. 6.

[39] *See Allen v. State Bd. of Elections*, 393 U.S. 544, 565-66 (1969) (broadly construing the VRA as "aimed at the subtle, as well as the devious, state regulations which have the effect of denying citizens their right to vote"); *Tcherepnin. Knight*, 389 U.S. 332, 336 (1967) (stating general rule of statutory construction)l.

requirement of the law.[40] 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."[41] In that context, the Court turned to the "totality of the circumstances" test, and said that "any circumstance that has a logical bearing on whether voting is 'equally open' and afford equal 'opportunity' may be considered," and proceeded to list five "important circumstances" that were relevant.[42]

For the most part (with the exception of number (2)), these "important circumstances" seem fairly innocuous: (1) the size of the burden; (2) the degree of departure of the challenged practice from practices standard when Section 2 was amended or which are widespread today; (3) the size of the disparity; (4) the opportunities provided by the electoral process as a whole; and (5) the strength of the state's justification for the practice. The devil, however, 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."[43] Although this may sound somewhat innocuous, its application 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).[44] 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

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[40] *Brnovich v. Democratic National Committee*, 2021 WL 2690267, at *12; 52 U.S.C. § 10301.

[41] *Brnovich v. Democratic National Committee*, 2021 WL 2690267, at *12 (emphasis in original).

[42] *Id.*

[43] *Id.*

[44] *Id.*

white voters not to be able to get the ID because of, among other reasons, lack of access to transportation.[45]

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-warming," 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.[46]

Mandating additional voter ID requirements in order to submit an application 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.[47] 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 different 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 serious impact on the voting rights of persons of color.

4. 1982 Standards and Widespread Practice Are Not Important

Second, Justice Alito said that another relevant factor was 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

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[45] *Veasey v. Abbott*, 830 F.3d 216, 251 (5th Cir. 2016).

[46] Georgia Senate Bill 202 (online at https://www.legis.ga.gov/api/legislation/document/20212022/201498); *Georgia State Conference of the NAACP v. Raffensperger*, First Amended Complaint at 36; Stephen Fowler, *Why Do Nonwhite Georgia Voters Have To Wait In Line For Hours? Too Few Polling Places*, Georgia Public Broadcasting, Oct. 17, 2020, *accessible at* https://www.npr.org/2020/10/17/924527679/why-do-nonwhitegeorgia-voters-have-to-wait-in-line-for-hours-too-few-polling-pl.

[47] *Georgia State Conference of the NAACP v. Raffensperger*, First Amended Complaint at 44.

that were and are commonplace are useful comparators when considering the totality of the circumstances."[48] 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 the change 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 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.[49] 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.

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,"[50] again dealing obliquely with the consequences of the differences being caused by differences in wealth – which may themselves be the result of historic 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 OOP. 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.[51]

The Court did not note that the discriminatory OOP practice meant that almost 4,000 votes cast by voters of color had been rejected – and that if their

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[48] 2021 WL 2690267, at n.15.

[49] *Georgia State Conference of the NAACP v. Raffensperger*, First Amended Complaint at 47.

[50] 2021 WL 2690267, at *13.

[51] *Id.* at *4.

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.[52] 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. 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 the fact that, for example, access to absentee ballots may be curtailed, it may not matter if the voter can still vote in person.[53] But, if an advantageous means of voting is curtailed as to one group more than it is to another, what difference does it matter 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, contracting them makes it less likely that people will vote. Contracting 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. 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 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."[54] 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 hundred of thousands of voters who were potentially deprived from voting under Texas's prior

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[52] *Veasey v. Perry*, 71 F.Supp.3d 627, 659 (S.D. Tex. 2014).

[53] 2021 WL 2690267, at *13.

[54] *Id.*

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.[55]

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."[56] Further, *Gingles* recognized the applicability of the various Senate Factors would naturally turn on the type of Section 2 claim at issue.[57] The *Gingles* Court's statement that the Senate Factors will "often be pertinent to *certain types* of § 2 violations," such as dilution,[58] cannot be reconciled with a conclusion that the Factors "*only*" inform one specific type of Section 2 claim.

9. There is no reason not to apply the "least restrictive means" test to Section 2 claims

The one area that the Court conclusively shuts the door on is the use of what it calls the "strict necessity requirement," under which courts had previously required states accused of discriminatory practices to justify "that their legitimate interests can be accomplished only by means of the voting regulations in question."[59] After *Brnovich*, states no longer have to justify their acts of discrimination with such facially reasonable proofs. As Justice Kagan explained in her dissent, an alternative-means inquiry is a legitimate way to ensure that a State is not using facially neutral laws to achieve a discriminatory intent. "[A] State that tries both to serve its electoral interests and to give its minority citizens equal electoral access will rarely have anything to fear from a Section 2 suit."[60] This should not be a heavy lift for a state

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[55] *Id.*

[56] 478 U.S. at 45 n.10 (emphasis added); see Senate Report at 30 (confirming that Section 2 "prohibits practices, which . . . result in the denial of equal access to any phase of the electoral process for minority group members") (emphasis added).

[57] *See id.* at 45.

[58] *Id* (emphasis added).

[59] 2021 WL 2690267, at *14.

[60] 2021 WL 2690267 (KAGAN, J., dissenting) at n.5.

interested in helping people to vote as opposed to making it more difficult for them to vote.

IV. The Confluence of *Shelby County* and *Brnovich*

When first enacted in 1965 and after the 1982 amendments, the combination of Section 2 and Section 5 of the Voting Rights Act worked together to provide a relatively effective means of preventing and remedying minority voting discrimination. Because of the *Shelby County* decision, that has dramatically changed.

A. Section 5

Section 5 required jurisdictions with a history of discrimination, based on a formula set forth in Section 4(b), to obtain preclearance of any voting changes from the Department of Justice or the District Court in the District of Columbia before implementing the voting change.[61] From its inception, there was a sunset provision for the formula, and the subset provision for the 2006 Reauthorization was 25 years.[62]

Section 5 covered jurisdictions 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 minority voters.[63] Effect was defined as a change which would have the effect of diminishing the ability of minority voters to vote or to elect their preferred candidates of choice.[64] 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.

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

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[61] 52 U.S.C. §§ 10303(b),10304.

[62] 52 U.S.C. § 10303(b).

[63] 52 U.S.C. § 10304(c).

[64] 52 U.S.C. § 10304(b), (d).

> 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.
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> 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.[65]

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 post-*Shelby* world, a jurisdiction is likely to get away with implementing a discriminatory change for one election (or more) before a plaintiff receives relief from a court, as the Hancock County, Georgia voter purge and Texas voter identification cases detailed later illustrate.

The Section 5 process also brought notice and transparency to voting changes. Most voting changes are made without public awareness. DOJ would produce a weekly list of voting changes that had been submitted, which individuals and groups could subscribe to in order to receive this weekly list from DOJ.[66] 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.[67] But even more important, the Section 5 process incentivized jurisdictions to involve the minority community in voting changes. DOJ's Section 5 Procedures requested that jurisdictions with a significant minority population provide the names of minority community members who could speak to the change,[68] and DOJ's routine practice was to call at least one local minority contact and to ask the individual whether she or he was aware of the voting change and had an opinion on it. Moreover, involved

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[65] 2014 National Commission Report at 56.

[66] Section 5 Procedures, 28 C.F.R. § 51.32-51.33.

[67] *Id.* at 28 C.F.R. § 51.38(b).

[68] *Id.* at 28 C.F.R. § 51.28(h).

members of the community could affirmatively contact DOJ and provide relevant information and data.[69]

B. The *Shelby County* Decision

In the *Shelby County* case, the Supreme Court decided in a 5-4 vote that the Section 4(b) coverage formula was unconstitutional. The majority held that because the Voting Rights Act "'impose[d] current burdens,'" it "'must be justified by current needs.'"[70] 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.[71] The four dissenting justices found that Congress had demonstrated that regardless of what data was used to determine the formula, voting discrimination had persisted in the covered jurisdictions.[72] 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."[73]

The effect of the *Shelby County* decision is that Section 5 is effectively immobilized as, for now, preclearance is limited only to those jurisdictions where it is imposed by a court after a court previously made a finding of intentional voting discrimination. This special preclearance coverage is authorized by Section 3(c) of the Act. Courts have rarely ordered Section 3(c) coverage, and when they do, it is typically quite limited. Indeed, the only jurisdictions I am aware of that have been subject to Section 3(c) coverage since the *Shelby County* decision are Pasadena, Texas and Evergreen, Alabama.[74] In the case of Pasadena, the only changes subject to preclearance relate to the method of election and redistricting.[75]

As a result, Section 5 is essentially dead until Congress takes up the Supreme Court's invitation to craft another coverage formula. There are compelling reasons for Congress to do so because, as discussed below, voting discrimination has increased in the absence of Section 5, and by, diluting the power of Section 2, and by creating ambiguities as to Section 2's reach, the Supreme Court has now made matters worse.

C. Pre-*Brnovich*, Section 2 was an Imperfect Substitute for Section 5

The year after the *Shelby County* decision was issued, the Executive Summary

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[69] *Id.* at 28 C.F.R. § 51.29.

[70] *Shelby County*, 570 U.S. at 536 (quoting *Northwest Austin Municipal Util. Dist. No. One v. Holder*, 557 U.S. 193 at 203 (2009)).

[71] *Shelby County*, 557 U.S. at 545-54.

[72] *Id.* at 560 (Ginsberg, J. dissenting).

[73] *Id.* at 556.

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

[75] *Id.*

and Chapter 3 of the 2014 National Commission Report discussed what was lost in the *Shelby County* decision. The Report predicted that voting rights discrimination would proliferate in the absence of Section 5.[76] The subsequent years have demonstrated that the negative impacts we anticipated have come to pass.

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 in the *Preliminary Report of Racial and Ethnic Discrimination in Voting, 1994-2019*. This preliminary analysis of administrative actions and court proceedings identified 340 instances between 1994 and 2019 where the U.S. Attorney General or a court made a finding of voting discrimination or where a jurisdiction changed its laws or practices based on litigation alleging voting discrimination. We found that the successful court cases occurred in disproportionally greater numbers in jurisdictions that were previously covered under Section 5.

The Lawyers' Committee's Voting Rights Project itself has never been busier than in the *post-Shelby County* years. As of 2019, we had participated in 41 cases, achieving some success in almost 80% of them. By the end of last year, the total of post-*Shelby* cases where we participated as a counsel to a party or as amici had ballooned to 100. Because the Lawyers' Committee's has a racial justice mission, all of the cases we have participated in implicate race in some fashion in our view, even if there are no race claims in the case.

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

A few specific examples from the Lawyers' Committee's litigation record illustrate why, even before *Brnovich*, Section 2 was an imperfect substitute for Section 5, and why post-*Brnovich*, without congressional action, the situation is more dire.

Prior to *Shelby County*, Texas passed the strictest voter ID law in the country. Because Section 5 was in place, Texas could not implement the law (SB 14) without preclearance from either the Attorney General or the United States District Court for the District of Columbia. The Attorney General refused to preclear the law, and a three-judge panel found that the law had a retrogressive impact on the rights of Black and Latinx voters.[77] The afternoon that *Shelby* was decided, then-Texas Attorney General Greg Abbott announced that the State would immediately implement the ID law.[78] Several civil rights groups, including the Lawyers' Committee, filed suit in Texas federal court, challenging SB 14 under several theories, including Section 2

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[76] 2014 National Commission Report at 12, 55-64.

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

[78] *Veasey v. Abbott*, 830 F.3d 216, 227 (5th Cir. 2016).

and DOJ filed its own suit under Section 2, and all of the cases were consolidated. The parties then embarked on months of discovery, leading to a two-week trial in September 2014, where 55 witnesses, including 16 experts — three-quarters 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 it had a discriminatory result in that Black and Hispanic voters were two to three times less likely to possess the SB 14 IDs and that it would be two to three times more burdensome for them to get the IDs than for white voters. The District Court's injunction against SB 14, however, was stayed pending appeal by the Fifth Circuit, so the law — now deemed to be discriminatory — remained in effect.[79] Subsequently, an *en banc* panel of the Fifth Circuit Court of Appeals, affirmed the District Court's finding.[80] But because Section 5 was no longer in effect, elections that took place from June 25, 2013 until the Fifth Circuit *en banc* opinion on July 20, 2016 took place under the discriminatory voter ID law. Had Section 5 been enforceable, enormous expense and effort would have been spared. The district court awarded private plaintiffs $5,851,388.28 in attorneys' fees and $938,945.03 in expenses, for a total of $6,790,333.31. The fee award is currently on appeal. As of June 2016, Texas had spent $3.5 million in defending the case.[81] Even with no published information from DOJ, more than $10 million in time and expenses were expended in that one case. And, as noted above, with the issuance of *Brnovich*, the case would have been harder – and certainly more expensive – for plaintiffs to litigate.

In 2015, the Board of Elections and Registration, in Hancock County, Georgia, changed its process so as to initiate a series of "challenge proceedings" to voters, all but two of whom were African American. This resulted in the removal of 53 voters from the register. Later that year, the Lawyers' Committee, representing the Georgia State Conference of the NAACP and the Georgia Coalition for the Peoples' Agenda and individual voters, challenged this conduct as violating the Voting Rights Act and the National Voter Registration Act, and obtained relief which resulted in the placement of unlawfully-removed voters back on the register.[82] Ultimately, plaintiffs and the Hancock County Board agreed to the terms of a Consent Decree that will remedy the violations, and required the county's policies to be monitored for five years. But after the purge and prior to the court order, Sparta, a predominantly black city in Hancock County, elected its first white mayor in four decades. And before the case was settled, and the wrongly-purged voters placed back on the rolls, at least one of them had died.

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[79] *Id.* at 227-29, 250.

[80] *Id.* at 224-25.

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

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

C. The Growing Present Need

Recent events reflect the significant present-day impact of the *Shelby County* decision and the loss of Section 5 and the potential impact of *Brnovich*. 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. The law was passed in the aftermath of 2020 and 2021 elections that were extremely close and saw the margins of victory in both presidential and senatorial elections decided by the votes of people of color.

SB 202 has spawned several federal lawsuits, most of which include voting discrimination claims. The Lawyers' Committee is counsel in one of these suits.

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*. This is perhaps most clearly demonstrated by Georgia introducing several restrictions focused on voting by mail:

- The new absentee ballot ID requirements mandate that voters include a Georgia Driver's license number or Georgia State ID number on their absentee ballot application. If they have neither, voters are required to copy another form of acceptable voter ID and attach the copies of ID documents along with other identifying information to both their absentee ballot applications and inside the absentee ballot envelope when returning the voted ballot.

- The bill also prohibits public employees and agencies from sending unsolicited absentee ballot applications to voters, yet threatens private individuals and organizations who are not so prohibited with a substantial risk of incurring hefty fines for every application they send to an individual who has not yet registered to vote or who has already requested a ballot or voted absentee.

- SB 202 significantly limits the accessibility of absentee ballot drop boxes to voters. While all counties would be required to have at least one, the placement of drop boxes is limited to early voting locations and drop boxes are available only to voters who can enter the early voting location during early voting hours to deposit their ballot inside the box. Thus, drop boxes are essentially useless to voters who can vote early in-person or who cannot access early voting hours at all due to work or other commitments during early voting hours.

- The bill also mandates an earlier deadline of 11 days before an election to request an absentee ballot, leaving some voters who become ill or have to travel out of the area in the lurch if they cannot vote during

> early voting and are unable to meet the earlier deadline to apply for a ballot.[83]

SB 202 does not stop with its effect on voting by mail. It takes direct aim at voting in person, in a way that targets voters of color, who are more likely to confront long voting lines than white voters in Georgia. Specifically, it prohibits the provision of food and water to such voters within 150 feet of a polling place, other than by election officials.

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 demonstrate how those who support the erection of barriers to vote intend on using that opinion.

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 Texas appears poised at this writing 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."[84]

The law being considered by the Texas legislature would also ban election officials from distributing absentee ballot applications without request from a voter; allow for the rejection of absentee ballots on the basis of signatures that do not exactly match – in the eyes of untrained election officials – the signatures on file – a practice which has been shown to adversely affect voters of color disproportionately; and place additional burdens on persons assisting others in need of help to vote.

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[83] *Georgia State Conference of the NAACP v. Raffensperger*, First Amended Complaint at 57-58.

[84] *Veasey v. Perry*, 71 F. Supp. 3d 627, 636–37 (S.D. Tex. 2014), *aff'd and reversed on other grounds*, 830 F. 3d ---- (5th Cir. 2016).

As with Georgia's SB 202, some of these provisions might have been stopped by an effective Section 5 and 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.[85]

V. The Appropriate Congressional Response

There are at least two approaches that Congress can and should take in response to the *Shelby County/Brnovich* assault on the Voting Rights Act. The record since the *Shelby County* decision demonstrates what voting rights advocates feared: that without Section 5, voting discrimination would increase substantially. Without legislation like the John Lewis Voting Rights Advancement Act that addresses the hole in the Voting Rights Act left by the *Shelby County* decision, our democracy is at risk. The first step is for Congress to pass such legislation.

Brnovich presents new challenges. Its impacts have yet to be measured, but common sense and history instruct us that those who wish to target voters of color will undoubtedly feel emboldened by a decision that can be read as making it more difficult for plaintiffs to prove a Section 2 violation giving state legislatures a "Get Out of Jail" card to pass voter suppressive legislation, and justify it simply by claiming "voter fraud." Although we firmly believe that the courts should not apply *Brnovich* in such manner, the threat is there. Continued commitment to the core purpose of the Voting Rights Act should not be left in the uncertainty created by the ambiguous and problematic language of *Brnovich*. We identify here a number of issues for consideration and would be pleased to work with the Committee on legislative text.:

- Clarify that the "totality of the circumstances" to support a Section 2 violation includes whether historical socio-economic discrimination interacts with the challenged voting practice to make it more difficult for voters protected by the Act to cast their ballots.

- Clarify that to prove the "result" of the discriminatory act, plaintiffs can apply any validly accepted statistical test, which can then be assessed in the totality of the circumstances.

- Clarify that a discriminatory law cannot be justified on the basis that it was a standard practice at a particular date, such as 1982, or is widespread today, but must be judged solely on the totality of the

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[85] *See, e.g.*, *Shelby Cnty.*, 570 U.S. at 536 ("[V]oting discrimination still exists; no one doubts that."); *Nomination of the Hon. Amy Coney Barrett to the Supreme Court: Hearing Before S. Comm. on the Judiciary* (Oct. 14, 2020) ("[R]acial discrimination still exists in the United States and I think we've seen evidence of that this summer.") (statement of Amy Coney Barrett).

circumstances in the particular jurisdiction, as viewed at the time the action under Section 2 is brought.

- Clarify that, while circumstances relating to the entire electoral system may be relevant to a Section 2 determination, the fact that there are other methods to vote than the challenged practice cannot be conclusive as to a results claim under Section 2.

- Clarify that the state's interest furthered by the challenged conduct may be one factor, and not a singularly overriding factor, in determining the totality of the circumstances, but must be based on more than unfounded apprehensions and the means chosen must be necessary to fulfill the asserted interest.

- Clarify that "totality of the circumstances" may include any or all of the factors deemed relevant by *Gingles*, including the Senate Factors.

- Clarify that partisan motives cannot be an adequate justification for the challenged conduct, if a discriminatory result is the means chosen to meet those motives.

- Put an end to any doubt, as raised by the concurring opinion of Justices Gorsuch and Thomas that there is a private cause of action for a Section 2 violation, as every Circuit Court of Appeals has held.

Written Testimony of Athena Salman
Arizona State Representative, Legislative District 26
Ranking Member of the AZ House Government and Elections Committee
Before the Hearing of the Committee on the Judiciary
on the Restoring the Voting Rights Act after *Brnovich* and *Shelby County*
July 14, 2021

Esteemed U.S. Senators — I am grateful to provide this written statement for the committee on the state of our democracy in Arizona. As the daughter and granddaughter of immigrants from Palestine, Mexico and Germany, I grew up with a deep appreciation for this country's freedoms and a responsibility towards public service. Like many new American families, I was taught at a young age that the highest form of civic participation was to exercise our freedom to vote.

Last year, we had the highest voter turnout in our state's history with over 3.4 million votes cast and over 80% voting by mail. Arizonans of all ages, races and backgrounds were energized to vote, some for the very first time. Our election administrators across the state worked tirelessly to ensure easy access to the ballot by expanding early voting sites, installing more drop boxes, giving voters sufficient notice to register to vote and receive their ballots by mail, and operating vote centers for in-person voting on election day. They provided accurate and impartial information on how to vote. This was all accomplished in the middle of a pandemic.

For years, our election system has been a national model. In fact, last year Governor Doug Ducey defended the integrity of our system in the face of baseless attacks and conspiracies in the immediate aftermath of the election. On January 6, 2021, millions of Arizonans were shocked as some of our own members of Congress voted to overturn the will of the voters and install the losing candidate. The failure of those members to uphold the U.S. Constitution and their oath of office was only one piece of a long-standing movement with ties to Arizona to try and undermine not only the 2020 election, but any other subsequent election in our state.

The disdain for the diversifying American electorate held by Republican elected officials in Arizona has been percolating over the past decade in response to the successful mass voter registration and mobilization efforts that emerged after Senate Bill 1070, the infamous "show me your papers law." For years, conservative lawmakers attempted to ban ballot return assistance by third parties once the data began to show increased registration and utilization of the permanent early vote list (PEVL), our vote by mail program, by Latinx and indigenous voters. These lawmakers, many of whom had voted to establish the PEVL in 2007 and were themselves registered on the PEVL, did not object to the program when it was predominantly used by conservative-leaning caucasian voters. Attempts to ban ballot return assistance failed due to the threat of the U.S. Department of Justice intervention under Section 5 of the Voting Rights Act, but when the Supreme Court stripped away protections for voters of color in *Shelby County*, the floodgates of voter suppression opened. By the 2016 elections, Republicans made it a felony for an individual to return a ballot on behalf of another voter even with their permission.

Having served on the elections-equivalent committee for five years in the Arizona House of Representatives, I witnessed a steep uptick in open hostility by the Republican majority towards voters following the record vote turnout in the 2018 midterms. In recent history, Arizona has

largely elected Republicans up and down the ballot. But that year Democratic candidates picked up four of the nine statewide positions, one Congressional seat, and four seats in the state House, narrowing the Republican majority to one. The following year, Democratic lawmakers defeated proposals by the Republican majority to purge voters from the PEVL, limit the types of ID voters could use at election day polls, make it a felony to be paid to register voters, and fine voters thousands of dollars for violating onerous voter registration rules. However, Republican lawmakers passed laws to extend ID requirements to early voting sites, a barrier that would disproportionately impact people of color, young and low income voters, place new obstacles at emergency vote centers, and create an "Election Integrity Unit" in Attorney General Mark Brnovich's office. The AG subsequently hired Jennifer Wright to lead this voter suppression unit, a Tea Party activist with a history of implementing voter intimidation tactics at polling sites located in communities of color.

In 2020, after the majority of Arizona voters voted for President Joe Biden, a wave of Republican elected officials abused the privilege of their offices to legitimize and spread falsehoods about our elections. They attended armed protests outside the Maricopa County Recorders' Office while ballots were being tabulated, hosted a mock-hearing with the ex-president's legal counsel (Rudy Giuliani), issued press releases to amplify the falsehoods about the election, organized rallies with fugitive "Stop the Steal" Leader Ali Alexander to incite conspiracy theorists, and held an official Senate Judiciary Committee hearing with the authorization of Senate President Karen Fann during which they issued a subpoena to usurp all ballots, envelopes, machines, voter information and other materials to conduct their own partisan sham audit. These actions resulted in death threats against Governor Ducey, Secretary of State Katie Hobbs, Speaker of the House Rusty Bowers, and other election officials who refused to illegally overthrow the election.

The 2021 legislative session saw the Republican majority introduce more than 25 bills attacking the right to vote. The new laws that passed include, but are not limited to, purging 120,000-200,000 Arizonans from the PEVL; enacting a racially discriminatory curing period for certain ballots; stripping our Democratic Secretary of State of litigation authority over elections and transferring it to our Republican Attorney General through the end of their terms; allowing counties to put unique identifying codes on ballots that could be traced back to voters; and banning private grants to assist with election administration. Most alarmingly, Republicans snuck into the budget a law that would require the Secretary of State to convey all voter information — including the last 4 digits of Social Security Numbers, drivers license numbers, and dates of birth — to the Attorney General's "election integrity unit" *and* a vendor of the legislature's choosing (i.e., the Cyber Ninjas). The Attorney General and vendor could challenge anyone's voter registration status. Counties will then be required to remove these voters from the rolls and the Attorney General and County Attorneys will be mandated to investigate and prosecute any voter flagged as ineligible to vote.

The Supreme Court gutted Section 2 of the Voting Rights Act in *Brnovich.* This was the last piece of that vital federal law protecting every American's freedom to vote under our current system. I urge you to do everything necessary to swiftly enact new measures to protect voting rights in Arizona and nationwide. Thank you for this opportunity to share this statement.

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