

**MODERN-DAY VOTING
DISCRIMINATION IN ALABAMA**

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BEFORE THE
SUBCOMMITTEE ON THE CONSTITUTION
OF THE
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MODERN-DAY VOTING DISCRIMINATION IN ALABAMA

FRIDAY, MARCH 1, 2024

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

The Subcommittee met, pursuant to notice, at 4:02 p.m., in Montgomery Interpretive Center at Alabama State University, Montgomery, Alabama, Hon. Laphonza Butler, Chair of the Subcommittee, presiding.

Present: Senator Butler [presiding].

OPENING STATEMENT OF HON. LAPHONZA BUTLER, A U.S. SENATOR FROM THE STATE OF CALIFORNIA

Chair BUTLER. The Subcommittee on the Constitution hearing will come to order. Today, the Senate Judiciary Subcommittee on the Constitution is holding its first hearing of the year on protecting the right to vote at the Montgomery Interpretive Center on the campus of the historic Alabama State University.

This center exists to memorialize the people, events, and the literal path of the 1965 Selma to Montgomery Marches. When the late great Congressman John Lewis and hundreds of foot soldiers in this State marched to secure voting rights for African Americans nationwide.

Our country is forever indebted to the sacrifice of the Alabamians and allies from around the country who put their lives on the line to ensure that all Americans, regardless of their race, could access the ballot and have their voices heard in our democracy.

The Selma to Montgomery marches, moved this body to action, and later that summer, Congress passed the Voting Rights Act of 1965. Though we have come a long way since 1965, we unfortunately still have a long way to go.

In 2013, the Supreme Court of the United States gutted the meaningful enforcement of the Voting Rights Act in *Shelby County v. Holder*. It eliminated necessary Federal protections for voters of color in jurisdictions with a history of voter discrimination places like Alabama.

The Court moved to weaken, the Voting Rights Act again in 2021 with its decision, in *Brnovich v. The DNC*, which made it harder for Plaintiffs to prove that restrictive voting laws are racially discriminatory by adopting guideposts that contradict the text of the VRA and the intent of Congress.

I've called this field hearing today, this historic weekend to discuss the modern-day voting discrimination, that has not just continued but evolved and accelerated since the 2013 Court decision. In 2024, nearly 60 years after bloody Sunday, we know that though some things have changed in America, discrimination against voters of color is not one of them.

The testimony we'll hear today will demonstrate and make plain that Congress needs to pass the John R. Lewis Voting Rights Advancement Act and the Freedom to Vote Act to restore the original protections of the Voting Rights Act, but to also undo the damage done by the Supreme Court, and protect the franchise of voters of color as soon as possible.

Those State lawmakers and election officials may no longer make voters of color count the number of jellybeans in a jar, or the number of bubbles on a bar of soap. We know they continue to draw racially discriminatory congressional districts in a way that prevents voters of color from electing the candidates of their choice.

We need only to look at the Alabama State Capitol, just a short walk away from where we sit today, and the State legislatures attempt to defy the Supreme Court's order in *Allen v. Mulligan* last summer, to draw an additional Black congressional district to understand that some things just haven't changed. majority

And while Black voters in Alabama may now be able to cast their ballots in local elections, all one has to do is to look at the City Council of Newbern, Alabama and their refusal to seat Mayor Patrick Braxton to realize that though voting discrimination in 2024 may look different than it did in 1965, discrimination remains.

The degradation of our democracy that began with the Supreme Court's 2013 decision in *Shelby County* and has noticeably accelerated since 2020 should be a shock to the conscience of all Americans regardless of race.

That's why yesterday I stood with my colleagues for the formal reintroduction of the Senate version of the John R. Lewis Voting Rights Advancement Act, which would reverse the damage caused by the Supreme Court's decisions in *Shelby County* and *Brnovich* and provide additional Federal protections for voters of color across the country.

As Justice Ruth Bader Ginsburg wrote in her dissent in *Shelby County*, "throwing out pre-clearance when it has worked and is continuing to work to stop discriminatory changes. It's like throwing away an umbrella in a rainstorm because you're not getting wet." Since she wrote those words, voters and jurisdictions that were previously subject to Federal pre-clearance have faced a torrential downpour of voter suppression.

Now, let me be clear, I'm not here and we are not here to single out Alabama or any other southern State exclusively for voting discrimination. Even my own State of California had three counties whose election changes were subject to Federal pre-clearance due to their own history of discrimination before 2013.

In fact, Alabama is not the only State that has been forced by Federal Courts to redraw their congressional maps in the last year. Earlier this year, Louisiana was similarly forced to redraw its congressional district maps. After the Fifth Circuit Court of Appeals, which was one of the most conservative appellate circuit Courts in

the country, ruled that those maps likely violated the Voting Rights Act by discriminating against Black voters.

Louisiana like Alabama, ultimately adopted a map that granted Black voters an additional majority minority congressional district, ensuring that voters of color will be able to elect candidates who share their political beliefs and best serve their interest.

Louisiana and Alabama's recent redistricting woes largely illustrate the need for Federal pre-clearance. Before 2013, both Louisiana and Alabama would have had to submit their maps for pre-clearance, likely preventing voters of color in those States from having to sue to achieve proper representation in Congress.

As we'll hear today, these lawsuits often take several years and an overwhelming amount of resources to litigate. Though voters of color in Louisiana and Alabama will have adequate representation soon. They've also had to sit through nearly a full term of Congress without equal representation in the U.S. House of Representatives.

And it's not just redistricting, in 2023 alone State legislators throughout the country introduced more than 354 bills with provisions that make it harder for people, particularly people of color to vote. Fourteen States went on to enact 17 restrictive voting bills and that was just last year.

And since 2020, State legislators have enacted nearly 400 bills that make it significantly harder for Americans to vote. That is not only unacceptable. It illustrates why the key protections and enforcement of the Voting Rights Act must be restored to ensure that voters of color all across our great nation are able to access the ballot and have the power to elect officials who will speak for and legislate for them.

Thank you all for attending this Subcommittee's field hearing today, where the weather is that torrential downpour. And I am excited for us to begin hearing our first panel of witnesses.

I'll introduce our panel, and I'll talk about how our hearing will proceed forward even as our guests continue to join us. First on this panel, I want to welcome Major Shalela Dowdy, who serves as the founding president of Standup Mobile, a nonprofit organization that does work centered around voter engagement in Mobile County, Alabama, and as vice president of the Mobile NAACP.

She is also a plaintiff in the Alabama redistricting case, *Allen v. Milligan*, where the Supreme Court ruled that the State's congressional maps likely violated the Voting Rights Act. Major Dowdy earned her bachelor's degree from the United States Military Academy at West Point, served 6 years in the United States Army on active duty and is currently in the Army Reserve where she holds the rank of Major.

Next, I'd like to welcome Laurel Hattix, who serves as staff attorney for the ACLU of Alabama. Laurel has served as part of the litigation teams challenging Alabama's redistricting maps in *Allen v. Milligan* and previously served as a fellow at the Equal Justice Initiative.

She served as a judicial law clerk on the U.S. District Court for the Eastern District of Michigan. Earned her JD from the University of Chicago Law School and her bachelor's from Vanderbilt University.

Last on our first panel, I'd like to welcome LaTosha Brown, the co-founder of the Black Voters Fund, a power building, southern based civic engagement organization. Ms. Brown is an award-winning organizer with over 20 years of experience working in the non-profit and philanthropy sectors, on a wide variety of issues related to political empowerment, social justice, economic development, leadership development, wealth creation, and civil rights.

Welcome to our panelists. Before we move forward, I'd like to lay out the mechanics for today's hearing. After we swear in our first panel of witnesses, each of them will have 5 minutes to provide their opening statements.

After their opening statements, we'll move to the next portion of the hearing while I'll have the opportunity to ask questions. Following that, we'll move to our second panel where the witness will be given an opportunity for opening statement. We are live streaming today's hearing. So, if you brought your cell phones, we love for you to remember to silence them and remain as quiet as possible so that we can preserve the Congressional Record.

I'll now ask our witnesses to stand and raise their right hand.
[Witnesses are sworn in.]

Chair BUTLER. Let the record reflect a response in the affirmative. Thank you all. Major Dowdy, you can proceed with your opening statement.

STATEMENT OF SHALELA DOWDY, VICE PRESIDENT OF MOBILE ALABAMA NAACP, PRESIDENT OF STANDUP MOBILE, MOBILE, ALABAMA

Major DOWDY. Chair Butler, Ranking Member Cruz and other distinguished Committee Members, thank you for the opportunity to submit this testimony concerning my experiences with racial discrimination in voting in Alabama over the past decade. I'm a major in the United States Army Reserves and graduate of the United States Military Academy at West Point, second Vice President of the Alabama NAACP.

And we and the founding president of Stand Mobile, where we believe that is important for all people to have their voices heard, especially those who are too often excluded from the political, economic, and social institutions that help shape their lives.

I submit this testimony as an organizer who is passionate about voting rights and fair access to the ballot. This work led me to become a plaintiff in the ongoing historic voting rights case, *Allen v. Milligan*, where alongside my co-plaintiffs, we fought against Alabama's racially discriminatory 2021 congressional map and the 2022 congressional map.

Both maps passed by the legislature in response of the U.S. Supreme Court affirming that the 2021 map likely violated Section 2 of the Voting Rights Act, failed to provide Black Alabamians a fair and equal opportunity to elect their preferred candidate. And instead, unfairly prioritize the needs of White Alabamians and limited Black voters to have any true influence by giving us basically only one out of the seven Alabama congressional Districts.

Alabama's elected officials and those in positions of power have a continuous history of unfairly minimizing the voting power of

Black people and enacting voting restrictions that make it disproportionately more difficult to vote and have their votes counted.

This pattern continued during the redistricting cycle, after the 2020 census. Alabama's Reapportionment Committee was tasked with drawing new congressional State House, State Senate, and State school board maps.

The Committee held over 20 public hearings around the State, both in person and virtually. I attended the hearing in Mobile in person and virtually attended a number of additional hearings held around the State. At hearing after hearing, Black voters urged the Committee to stop unfairly limiting the voting power of Black Alabamians and to draw two districts in which Black voters could have a real chance at electing their candidate of choice.

The Reapportionment Committee ignored these voices. It rushed through its process in a matter of a few days, and with limited chance for public input and once again, produced the map that unfairly limited Black voting power to one congressional district. It did so by continuing to crack the Black Belt region into four districts, splitting Montgomery County and failing to unite communities of interest in my hometown of Mobile with those of the Black Belt.

The Committee also failed to allow citizens the opportunity to provide public commentary on the maps the Committee produced. The Committee also did not allow the Black elected officials adequate time to review and provide input in the creation of the maps.

The actions of the Reapportionment Committee showed a lack of responsiveness to Black Alabamians. In January 2022, the three judge court panel agreed with me and the other Milligan Plaintiffs, that Alabama's 2021 congressional map likely, unfairly diluted the voting power of Black Alabamians in violation of Section 2 of the Voting Rights Act, as it provides Black voters less opportunity than other Alabamians to elect candidates of their choice to Congress.

The court decided that the appropriate remedy is a congressional redistricting plan that included either an additional majority Black congressional district or an additional district in which Black voters otherwise have the opportunity to elect a representative of their choice, but told the legislature to be mindful of the practical reality based on the ample evidence of intensely racially polarized voting adduced during the preliminary injunction proceedings. That any remedial plan would need to include two districts in which Black voters either comprise a voting age majority or something quite close to it.

After putting the decision on hold, the Supreme Court ultimately agreed that the congressional map violated Section 2 of the Voting Rights Act. Given this decision, the three-judge court allowed the Alabama legislature to reconvene and produce a congressional map with a second congressional district in which Black voters would have a fair opportunity to elect a candidate of their choice.

The legislature chose to defy what was ordered by the highest Court in our Nation. The Committee once again produced a map that was not fair and equitable, and in the summer of 2023 did not produce its proposed map in time to allow public commentary on the map.

The 2023 map consisted of congressional District 2 having a Black voting age population of under 40 percent, which the State itself admitted was not one in which Black voters would have been able to elect their preferred candidate in any of the past elections that they studied.

The words of the Alabama Court—the words of the court to Alabama were blunt and unmistakably and calling out Alabama’s blatantly and purposeful failure to fix the racially discriminatory map.

The court states that it was deeply troubled that the State enacted in the map, that the State readily admits that it does not provide the remedy that the Federal court requires, and that it was disturbed by the evidence that the State delayed remedial proceedings.

This time the court echoed the voice of the Black Alabamians in explaining that it could not help but find that the circumstances surrounding the enactment of the 2023 plan reflected a significant lack of responsiveness on the part of elected officials to the needs of Black voters in Alabama.

The court noted that the legislature’s purposeful decision not to create an additional opportunity district was strong evidence that it was unwilling to respond to the well-documented needs of Black Alabamians.

Alabama chose to defy the order and the opinions of both the lower court and the U.S. Supreme Court, which revealed its dismissive attitude toward the requirements of Federal law and to an effort to stop its decade long pattern of excluding Black Alabamians from exercising their full and fair measures of political power.

The legislative branch makes the law, but we have the judicial branch in place to expertly interpret the law. Choosing to defy the courts resulted in a court order map being produced that cost Alabama taxpayers over \$500,000, not to mention the several million dollars in attorney fees they will undoubtedly owe.

This is funding that could have gone toward much needed Medicaid expansion, healthcare issues, education, and so much more. The Alabama legislature does not seem at all shamed by the court’s rebuke and instead has doubled down this legislative session on another exercise of modern-day voter discrimination in Senate Bill 1, which has passed in the State Senate and it’s moving through the State House.

SB1 will criminalize average Alabamians who assist others with their absentee ballot or the process. By the time this testimony is admitted into the record, the bill will have likely passed in the Alabama legislature. This is a dangerous tactic of voter suppression that is being implemented, that will have a drastic negative effect on the Black voting populations and voters with disabilities who disproportionately rely on ballot assistance to navigate Alabama’s burdensome and confusing absentee voting process.

During the 2021 municipal elections in Mobile, Alabama, I had the opportunity to work in the city’s absentee election office for 3 months. I assisted citizens who walked in to complete the in-person absentee ballots, due to Alabama not having early voting as an option.

I had the opportunity to witness many citizens who do not understand Alabama’s complicated absentee process, which requires not

only a copy of their photo ID but also signatures by two witnesses or a notary.

On election day, I assisted with the counting of absentee ballots and witnessed numerous ballots that were not counted because the citizens did not adequately complete the absentee process.

In my experience in Mobile, these ballots and those in need of assistance were disproportionately Black voters. This is not surprising, as I know a Federal court in Alabama recently found that Black voters are also less likely to have access to the internet or a computer in their home, less likely to have broadband internet and less likely to have a computer, smartphone or tablet compared to white households.

The same court found that 12.7 percent of Black households do not have a vehicle compared to 3.9 percent of White households, and that Black Alabamians with healthcare risks, face poverty at higher rates than their white high-risk counterparts.

All of this fits with my experience that Black voters are more likely to need access to the absentee voting process, but Alabama law has made it more burdensome for them to use it compared to white voters. SB1 continues this trend.

In closing, Congress must restore and strengthen the Voting Rights Act. Alabama has shown that it is shameless in consistently enacting discriminatory voting laws, which then must be challenged in court, and which can take years to play out and can negatively affect individuals like myself who are working to assist Black voters in Alabama.

Requiring jurisdictions like Alabama, which persistently continues to discriminate against Black voters and other voters of color to seek pre-approval once again for voting changes would help ensure more equal access to the voting process and voting power will go a long way in making the State live up to its professed values and comply with Federal law.

Thank you for the opportunity to testify and for being willing to listen to myself and the others who are testifying. It feels reassuring knowing that we have elected officials who care about what is going on out in the districts. Thank you.

[The prepared statement of Major Dowdy appears as a submission for the record.]

Chair BUTLER. Thank you, Major Dowdy.

[Applause.]

Chair BUTLER. Ms. Hattix, we'll actually turn to you. Please provide your opening statement.

**STATEMENT OF LAUREL HATTIX, STAFF ATTORNEY
ACLU OF ALABAMA, MONTGOMERY, ALABAMA**

Ms. HATTIX. Thank you so much. Chairwoman Butler and Members of the Committee, thank you for the opportunity to testify before you today. The American Civil Liberties Union of Alabama was founded in 1965, the very same year that the Voting Rights Act was enacted.

In my current capacity as staff attorney for the ACLU of Alabama, I'm part of litigation teams challenging Alabama's 2021 State Senate redistricting maps in the case *Stone v. Allen*, and its congressional maps in *Milligan v. Allen*.

Well, the Supreme Court's 2023 decision in *Milligan* demonstrates the continued importance of the ability to bring claims under Section 2 of the Voting Rights Act. Post enactment relief in the wake of *Shelby County v. Holder* is insufficient to protect voting rights.

It is not merely the history of Alabama, which demonstrates the current need for greater voting rights protection, but current discriminatory practices which continue to keep Black Alabamians from full and equal participation in the social, economic, and political life of this State.

During the 2020 general election, in some Alabama counties, white voter registration outpaced Black voter registration by double digits. In Elmore County, there was a 16.2 percentage point gap between White voter registration and Black voter registration.

These statistics are not mere accidents. They're the result of intentional policies implemented to disenfranchise Black voters. In 2014, after Alabama was no longer subject to Section 5 Pre-Clearance, the State implemented strict voter ID laws that required voters to show a limited number of State issue voter IDs to vote.

Simultaneously, the State of Alabama proposed the closure of over 30 driver's license offices around the State, which would provide these IDs. In 2016, a Federal investigation determined that the office closures would disproportionately impact Black residents in violation of the Civil Rights Act.

Intimidation, suppression, and disenfranchisement are not merely problems faced by Black voters, but also Black public officials. In 2020, Patrick Braxton became Newbern, Alabama's first Black mayor.

However, when Mayor Braxton attempted to execute his duties as the town mayor, former members of the prior majority white council reappointed themselves and declared the previous White incumbent who had not even qualified to run as mayor, as the new mayor.

Mayor Braxton remains locked out of town hall to this very day. The current barriers to Black Alabamians accessing the ballot or political office go beyond disenfranchisement, in fact, they go to criminalization

Proposed Senate Bill 1 is steamrolling past public opposition through the Alabama Legislature. SB1 would criminalize individuals who provide critical assistance to absentee voters, particularly those who are elderly, disabled, or in college.

If churches, non-partisan organizations or community members exchange any money or gifts when assisting somebody with their absentee ballot, even gas money or a sticker for participation, that individual could be charged with a Class B felony, which is punishable by up to 20 years in prison.

In Alabama other Class B felony offenses include manslaughter, statutory rape, and theft of property in the first degree. While proponents claim this bill is necessary to prevent ballot harvesting, there is no widespread evidence of voter fraud in Alabama.

Alabama law already strictly limits ballot return and the criminal penalties for violating these laws is already printed on absentee ballot applications. Even according to a data base from the Heritage Foundation, which nonpartisan independent researchers have

called “grossly exaggerated and devoid of context” found only 20 cases of any type of election fraud from 2000 to 2023.

If the 2013 decision in *Shelby County* had never occurred, Alabama would be required to submit SB1 to either the Attorney General or a Federal court for approval before it could be implemented. But without the pre-clearance requirement of the Voting Rights Act, Alabamians who face criminal penalties for promoting election participation must wait on costly, uncertain, and post enactment litigation to address any discriminatory impact of SB1, if it is passed.

In between the filing and eventual resolution of these suits, the discriminatory law or practice remains in place. Unlike relief which can be quantified in monetary terms, there is no relief for the irrevocable impact of multiple election cycles, which may have taken place under unconstitutional conditions.

This is why a new coverage formula, like the one proposed by the John Lewis Voting Rights Advancement Act is necessary to ensure that jurisdictions like Alabama that persist in enacting discriminatory voting laws, have review of those laws before they can harm voters.

I thank you again for the opportunity to testify in front of this Subcommittee on these critical issues.

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

Chair BUTLER. Thank you, Ms. Hattix.

[Applause.]

Senator BUTLER. Ms. Brown, your opening testimony.

**STATEMENT OF LATOSHA BROWN,
BLACK VOTERS MATTER FUND, ATLANTA, GEORGIA**

Ms. BROWN. Well, the first thing I did right was the day I started to fight. Keep your eyes on the prize and hold on.

[Singing.]

I wanted to start in the spirit of why we are here and what has brought us here in this moment, and I want to thank you Chair Butler and the Subcommittee Members of the Constitution Subcommittee. You know, as we find ourselves in this hearing, we are 59, this is a historic moment—is a historic moment of where we are.

Fifty-nine years later, and we are still asking the question, right. When will we have the democracy that we desire, we deserve as we sit here on this land that is holy land and holy ground, where people literally put their lives on the line to make sure that democracy was open and free for all of us.

That we find ourselves, once again, 59 years later, literally staring at infringements upon our right of having free and equal access to vote. And so there has always been three particular ways that we’ve seen voter suppression and happen in this Nation.

It has been one, restricting access to the ballot. Two, being able to weaponize the administrative process. And three, creating a culture of fear, chaos, and confusion. And so, part of what we’ve seen, particularly since the stripping of Section 5 of the Voting Rights Act, we’ve seen those things.

And so, there is a number of pieces that in Alabama, you know, immediately what we saw in 2011 right here in the State of Alabama that passed a voting rights—a voting ID law that required Alabamians to provide a form of ID and a very narrow list of options.

And then in what we saw in 2015 is in the same State of Alabama and in the Black Belt region, which much of the voting rights movement took place, that there was a proposed closing of the DMV sites where people go to get their IDs in predominantly African American majority counties or that they had large majority counties in that area that targeted African American voters.

And what we saw and what we've seen is we've actually seen a consistent pattern that reminds us of what we faced 60 years ago. We have seen—this is a moment for us that we want the Senate to think about. This is not a moment to turn backward. This is a moment to move us forward.

And in order to do that, we've got to have the protections that voters literally, no matter where you are, no matter who you are, that you have the protections to actually have free and fair access to the ballot. What we've seen, and my work at Black Voters Matter—Black Voters Matter is a power building organization. We do civic engagement work in about 17 States around the country, primarily we're based in the South.

And I can tell you from firsthand experience we've seen—in the last few years—we've seen people stand out in line and wait up until 12 hours to vote. We've seen spaces in which people—we've actually been at polling sites where the last person was not allowed to—did not cast their ballot until 12:37 a.m., Wednesday morning.

We've seen a disparity in terms of how people are voting on sides of town that are majority white, white boxes and voting areas, and then in majority Black areas. Why we ask this question, do we continue to see this kind of disparity?

In addition to that, we've also seen an increase in the intimidation tactics at the polling sites. We've actually had workers from Black Voters Matter that people have pulled guns on. We've seen where folks have been told that they could not vote there because they had on a T-shirt that just had Black Voter's Matter or just had a message that was not necessarily pushing a particular candidate or a particular party.

We've seen where people have been affected, particularly in rural areas about the limitations of drop boxes that we've seen, the elimination of drop boxes and other pieces that would restrict the access. And so, all that combined together, what we know is that there is—we have to be honest, in this country—there is an all-out attack on voters in this country. That Black voters are actually being punished for participating in the process.

And as a result, what we've seen is we've seen a crop of new laws to come up as we're—as we sit right here in the State of Alabama, there's SB1 that is a law that is actually going to criminalize—seeks to criminalize those that help people to vote an absentee ballot, throughout in the State.

In addition to that, what we saw is SB202 that immediately at the election in Georgia, what we saw is the passage of SB202, which has had a tremendous impact. You know, we know that it

is that in itself, it has created a gap and a turnout that we've seen just immediately the impacts of that, that in fact, the racial disparities in the voter turnout in Georgia during the 2022 midterm elections, not only it persisted, but it was significantly became worse.

That what we see is that in Georgia is significantly greater than the 8.3 percentage points before it passed, and that 62.2 percent to 53.9 percent in the previous midterm election, the disparity between Black and white voter turnout in Georgia and 2022 is actually higher than it has been in a general election in over a decade.

And so, are these tactics working? Are they effective? They have been effective, in ensuring and targeting Black voters and impacting our access, our free and fair access to the ballot. And so, we want to implore the Senate to continue to hold field hearings while we are on the backdrop of Alabama.

This is not just happening in Alabama. This is a nationwide problem. And we have to understand that how serious the nature of, how it weakens the democracy when people don't have free and fair access to the ballot. And so, we want to implore the Senate and Members of the Senate to take these findings and continue to build the record that we have to have field hearings, not one or two or three. We need to have field hearings to the intensity and to the scale in which this is happening to our communities.

Secondly, we want to ask the Senate that we think that there should be a carve out with the filibuster, so that we can actually get this, that the filibuster cannot be an excuse to be able to get—not be able to get the Voting Rights Act passed. That in the John Lewis Voting Rights Act, as well as the Freedom to Vote Act.

And then the third piece is that we need to make sure that as we are, that we are going to be true to the principles of this Nation. If we're saying that all men are created equal and endowed by their creator, then we have to ensure that, that this is a moment in time that we are actually being called to our highest and our best selves.

And we're going to ask that the Senate also hold itself at that standard, that what you have sworn to uphold, the Constitution, that in fact you will do that by making sure that every single American in this country, that their rights are not infringed because of who they are, the color of their skin, or where they live. Thank you so much.

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

Chair BUTLER. Thank you, Ms. Brown.

[Applause.]

Chair BUTLER. Major Dowdy, I appreciate your patience with me in pronouncing your name. You would think that somebody with a P and a Z in a name—

Major DOWDY. I understand—

Chair BUTLER [continuing]. Would get it right. Shalela—

Major DOWDY. Mm-hmm.

Chair BUTLER. Shalela Dowdy. Major Dowdy, I'd love to start my questions with you. On April 21st, former Alabama Secretary of State, John Merrill responded to a tweet, and I asked my staff to pull it so that we could have it for the record.

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

The Alabama Secretary of State, John Merrill, responded to a tweet criticizing Alabama's mail ballot ID requirement that has been mentioned here. In his tweet, he said, "when I come to your house and show you how to use your printer, I can also teach you how to tie your shoes and to tie your tie. I can also go with you to Walmart or Kinko's and make sure you know how to get a copy of your ID made, when you buy cigarettes or alcohol." Just let that sit.

Major Dowdy, can you—to the best you can—explain why expecting all Alabama voters to either have a printer or easily be able to access a store with a printer is not just ridiculous, but has a disproportionate impact on Black voters in Alabama?

Major DOWDY. Yes, Senator. And so, I would say the statement made by a former Secretary of State, I consider it to be ridiculous. If I need to print something right now, well, if I was in Mobile in my hometown. I would have trouble contacting people, my friends, and families to find a printer.

And so, I'm thinking Mobile is an urban city. So, individuals in the rural parts of the States, which I have frequent a lot recently due to our congressional race. Access to printers—broadband is the issue too. And so, you—most of the time you need Wi-Fi to print these days, the way the printers are set up.

And so, I think it was inconsiderate of him to make a statement such as that. He was equating not having access to a printer to them not being intelligent. And that was insulting as an elected official who is a leader within our State.

And it really goes to show how some of our elected officials just are not connected and aware of the situations, the living conditions, and what the struggle is within our State concerning all of our citizens. And like I said, I needed to send a document to someone, and they lived in a rural county, and their response was, well, I'll be able to receive your message or receive your email and check my email when I go to church on Sunday.

And so, I think a lot of those who are in elected positions are out of touch with the average Alabamian. And they just don't take into consideration that everyone doesn't have the luxury to have access to something as simple as a printer—it seems simple, even myself, I'm a college student right now, and if I need to print something, I literally, I do it at my law center, at my law school or I go to the library.

But in the rural areas, everyone doesn't have access to vehicles like I stated. And even in the urban cities, some people depend on public transportation. So, I know how difficult it is for people to simply print their ID because I go out into the communities and I provide people with a copy of the absentee request form, which they're trying to criminalize that.

They're trying to make it a criminal offense to provide another citizen with a document that's on the Secretary of State's website. How is that similar to manslaughter or a statutory rape? And so, I give them the request form and I realize they may not even be able to make much progress if they're not able to get a copy of their ID. And so, I think that was very insensitive of an elected official, a leader in our State to make a statement such as that.

Chair BUTLER. Thank you. Ms. Hattix, Alabama is not only one of the most difficult States when it comes to voting rights restoration. It's also one of the many States whose voter disenfranchisement laws tied to the Jim Crow era, and their efforts to prevent Black people from voting. Can you speak a little bit to Alabama's voter disenfranchisement law and the history and how it was specifically crafted to cover crimes that the State legislature at the time was—thought, at the time was connected to recently freed slaves?

Ms. HATTIX. Thank you so much for the question. Chairwoman Butler. To fully understand our current moment requires us to understand our history. I often use the analogy, if you go to a doctor and they do not perform the adequate test to understand the depths of the problem, then they cannot prescribe you the remedy to be able to address that problem.

And so, as you are saying, this is a historical development that began during the reconstruction era, when recently freed enslaved Black people were able to access the ballot in mass through programs, through Federal legislation that was supposed to give them these civic responsibilities and access.

In response to the opportunity by Black Alabamians to access the ballot. There was an increased criminalization of them that went along with it. And this criminalization was focused on the development and the next iteration of a narrative that has existed in this country since its founding.

And that narrative is that Black people in this country are assumed and presumed to be guilty before they have even done anything. And it is through that narrative lens that, in Alabama, we enacted a series of criminal codes that, they criminalized the everyday activities of people in ways that we wouldn't even recognize.

People not having an occupation was criminalized in Alabama, never mind that there was a lack of access to employment. So, these activities were purposefully criminalized, because then they could then disenfranchise Black voters by saying, you are a criminal, you therefore cannot participate in our civic participation processes.

And we see that today in the way that Alabama and our legislators continually expand our criminal codes here in Alabama. It is an ongoing process of criminalizing poverty, criminalizing lack of education, criminalizing the socioeconomic statuses that are purposefully created to keep Alabamians in the cradle of poverty so that they do not have access to voting rights.

And so today in our legislature, there is an emphasis not on building up the lives of Alabamians but continuing to hold them in our carceral institutions so that they can then be disenfranchised at the polls by not even being allowed to participate in our civic processes.

So again, this is a pattern, it is a practice. It is a re-imagination of a narrative that has existed in Alabama since people were first kidnapped and trafficked and brought to this country against their will. And it's one that we see persist in the percentage of bills that are focused on criminalizing Alabamians to this day.

Chair BUTLER. Thank you. Ms. Brown, you're from Selma?

Ms. BROWN. I am.

Chair BUTLER. Where, you know, this incredible facility that we're in, sort of tells this great story of courage and sacrifice to secure the right to vote that the march from Selma to Alabama.

I'd love for you to speak about the role your hometown has played in the passage of the Voting Rights Act and talk a little bit about why it's so important that we continue to fight for voting rights. Even as we experience the—what's been described here is the legislative attacks as perpetrated by actions in the State legislatures here in Alabama and across the country.

Ms. BROWN. Thank you for that question, Senator Butler. As I sit in the room, I'm looking at pictures, and actually, I was feeling full as I was walking right here to the table, because I look over here to my left, and that's GWC's comms, we would call it affectionately the GWC projects, we would say that.

In Selma, Alabama, I've organized—I learned how to be an organizer in this very area. You know, as I look, and there actually a couple of people on there that have poured into my life, that actually were the shaping of me. That, you know, I start with this question even as I was sitting here with the Senate, how long, how long, how much, how long should we suffer to get access to what we will like—what we deserve, that what is right, that we are actually holding this country to the standard, which it set itself.

And so, when I think about Selma Alabama, I think about this little, small infamous place, that there were 600 people on the Edmund Pettus Bridge that knew that they were going to be—they were going to be met with resistance. They didn't have a lot of political power. They didn't have a lot of leverage, but they did have this belief in this thing called democracy. They did have this belief that they could actually shape, not just a nation for themselves, but actually for all of us.

And as a result of their sacrifice, the sacrifice of those who actually were met with resistance that were beaten on the Edmund Pettus Bridge, all of us actually enjoy some aspect of democracy and having access to that.

And so, this little city that sits in the middle of the Black Belt region, maybe about 40 miles from here. You know, it's interesting, it was also the place of where my family—my family were brought here as enslaved Africans, they were brought specifically to Selma, sold in Mobile, and brought to Selma.

And so, the history of being sharecroppers and farmers in that area—the people of this area at one point provided one third of kind production for the country in this area. And so, this is an area that has been rich in giving, giving of itself. Selma has been very instrumental.

And I think when we see the multicultural, multiracial pictures, if you look around the room that it shows us the kind of democracy that we envision when we talk about the ideas—the highest ideas of America. It shows us about people who actually are standing on this belief that all men and women are created equal.

You know, it shows the tenacity and the resiliency of those who actually challenge those in power and say, no, this is what we're—we're fighting not only for freedom, but we're literally fighting for this thing called democracy to make it real.

And so, as we are in this 59th year, I think that it is incumbent for us to really learn from the lessons of Selma, learn from the lessons of those that in Selma that saw the—saw something greater. They saw, just like Harriet Tubman and the North Star, they saw an opportunity and had hope for this Nation.

And I would actually think of the many of the people like Reverend C.T. Vivian, Reverend James Orange, Dr. King, Ms. Amelia Boynton, these are people who actually put their day-to-day lives on the line, to be able to open up access to democracy. And I think what we see is—we continue to see—people on the front lines doing that work.

But Selma not—should be a place that we see as where a beating took place. It's also a beacon of hope. It should be a light for us. It should be almost like a north star of where we go with democracy. You know, it is at nighttime in this moment that we see—and some of us say a dark night of the soul in terms of democracy, where we see this kind of increased political division. We see the rise of voter suppression. We see this constant attack that is in this moment that literally that's where the brightest lights can shine.

And so, we are hoping that people see Selma and that the Senate sees its responsibility as the people of Selma, of leading the way of why we need to make sure that we are passing the John Lewis Voting Rights Advancement Act and the Freedom to Vote Act.

Chair BUTLER. Thank you.

[Applause.]

Chair BUTLER. You know, as a daughter of the South whose occupation now requires me to be in Washington, it's always good to be back in the South where people clap—

[Laughter.]

Chair BUTLER [continuing]. It just warms the soul. Thank you for the response. I want to make sure that we are engaging and hearing the voices—different voices. It's one of the reasons why we wanted to do this hearing, not in Washington DC but to sort of get ourselves as this Subcommittee proximate to what is really—what voters are experiencing on the ground.

Ms. HATTIX, in your submitted testimony, you spoke to the challenges of voters with disabilities and to be a Black voter with disabilities. And being at that intersection, how would you describe the proposed laws of SB1 and the support that those voters might need across Alabama and, how that those—the people who would be supporting those Alabamians living with disabilities could be impacted?

Ms. HATTIX. Thank you for the question, Chair Butler. This question is not only deeply professional for me, but it's also deeply personal. I, myself, I'm a disabled Black woman. I have lupus. And due to the symptoms of lupus, I am unable to drive a vehicle. A lot of people do not understand the infrastructure or lack thereof in Alabama.

We do not have a robust public transportation system, even in our most urban areas, much less our rural areas that allow people like myself who cannot drive, who cannot access public transport to go to the polls. To take it an even step further, the way that voting is talked about in the majority of this country, is as though it's a costless endeavor.

In Alabama, in 2021, the median income for Black families in this State was \$36,000, median Black income in this State. And so, when we talk about the structural barriers, we're talking about systems of poverty that make it incredibly costly for people to take time off work, which is not guaranteed at every job, particularly those that are low wage, hourly jobs.

We're talking about designating money that people are using for food, for diapers, for baby formula, to call Lyfts and Ubers, because we lack the public infrastructure for people to use public transport to access the polls. And on top of that, we're talking about an infrastructure of voting disenfranchisement that limits the time and ways in which people can vote.

And so, the real concern of SB1 is because the State has not addressed those gaps in our socioeconomic ways of living, in our structures, in our wages, it has become the responsibility of churches, of nonpartisan community organization, of volunteers and neighbors to fill in the gaps to address the cost to voting for everyday people.

What SB1 would do is criminalize the work of these neighbors who are filling in where the State has failed. And so, under SB1, if individuals like those from Black Voters Matter, Rolling To The Polls, Lift our Voice, provide any sort of financial assistance or even gift—which is undefined by the legislature currently—to help those who need access to transportation, who need to be able to take time off work, in voting that behavior is criminalized not only for the recipient of those services, but for the people who are providing those services.

So, to put this in very plain language, if I, as somebody who cannot drive myself to the polls, gave my neighbor \$5 to compensate them for the gas money that they would take me, both my neighbor and I could be facing Class B and Class C felonies in this State for that behavior.

And so, why would the State of Alabama, when in the 2022 mid-term elections, we had a voter turnout rate of less than 40 percent, not emphasize their efforts on making sure there is increased access to the polls. If we are a nation, if we are a State that is focused on voter engagement and increasing participation in our civic processes, there is no reason to be focusing so much time and energy on not just passing bills, but bills that would increase our carceral population for those who are filling in for the places where the State has failed to care for us.

Chair BUTLER. Thank you.

Ms. HATTIX. And then—

[Applause.]

Chair BUTLER. I knew it. I knew it.

[Laughter.]

Chair BUTLER. I just had to give you all time to get there. Thank you so much. Major Dowdy. I want to come back to you because I wanted to ask a question also about that you raised specifically in your submitted testimony. I wanted to note the point of—actually not Major Dowdy, Ms. Brown.

Ms. Brown you talked about other States in your written submitted testimony and what you offered in your opening statement, the point you made about Georgia. I appreciate that you have in

your comments sort of directed them toward the Senate as the body because we are—we have an obligation to govern on behalf of the country. And as I noted, not just in Alabama.

And so, I recognize the topic is about Alabama, but just to look one State over, the State you mentioned, Georgia, the Brennan Center for Justice, observed last year in a report that multiple data sets and analysis confirm the growing disparity between white and non-white voter participation.

What have been the consequences—what are the consequences if the gaps between white voters and voters of color continue to grow in States like Alabama, like Georgia, and across the deep south?

Ms. BROWN. You know, what you will see is you will see a continuous underrepresentation of those communities. And so, part of this idea of democracy is the notion that people will have representation. Taxation without Representation, that was the whole foundation of the American Revolution, wasn't it?

And so, here we see that in these places where Black voters, quite frankly, have been targeted in the deep South. What you see is that it impacts not only our participation, but ultimately it impacts representation. Even in State, as from Georgia to Louisiana, we were also—and it's not just in—it's not isolated just in Georgia or Alabama.

Most recently in the State of Louisiana, Black Voters Matter actually had to bring a lawsuit against the State of Louisiana for lack of representation for African Americans within the State housing.

And as we're—we won, we actually won that particular hearing, where now they have to redraw the districts in such a way that we will have adequate representation in the legislature. What we see, though, it is also like death by a thousand cuts. We are actually seeing these attacks happen on the county level. We're seeing it happen on the State level, and then now without the protection, and we're seeing the gutting of the Voting Rights Act with the attack on Section 5. And then God forbid, Section 2 is eliminated, then it takes the teeth out of it, and it puts the onus of on Black voters.

But it also disproportionately impacts us around—when our communities, when we're looking in at communities that there is an economic disparity. And when we're looking at communities that when you're seeing there's a health disparities when you're looking at communities that when you see education that even the idea of teaching Black history has been attacked on the school board level and people are not able to vote, if they're not able to vote and have representation and represent our issues, our interests. What we will see is we will start seeing policies as we've already seen, that actually impact and undermine and actually even further the gap, you know, it's in the justification. What's interesting in the *Shelby* decision, was the justification of the stripping of Section 5 was that the current conditions are not—don't justify the idea of the Section 5. I would say the absolute opposite. I think there's a preponderance of evidence that we see all across the State, immediately after the gutting of the *Shelby* decision, we saw a decision in Texas immediately, we've seen the massive closing of polling sites, we've seen the massive attacks, even when we saw in the 2020 election in Georgia where we saw that people because of Covid actually

accessed mail-in ballot voting's. They use that as a tool and a key that now what we see is that immediately the State legislature went against that with the SB202 and stripped that and literally condense that, so, people have restricted access.

And so, what does it mean? What it means is that when we are not able to freely and fairly participate in the process, that means that we don't have the kind of representation that is actually in—is supposed to be ensured to us in this country.

What it means is that we will continue to see a growth in disparities. What it means is that we won't have the ability to be able to fully participate in the democratic process so that we can have policies that actually align with the issues and the priorities of our communities.

Chair BUTLER. Thank you. And then Major Dowdy, I did have another question for you. You, in your testimony, spoke about the *Allen v. Milligan* hearing with the Redistricting Committee. Can you speak more about the field—the virtual hearings? I think you referred to them the virtual hearings, and the refusal as you experienced, to listen to and ultimately seek the advice of the participants in the hearing.

Ms. DOWDY. And so, the purpose—thank you for that question—the purpose of the hearings is to allow the public to have input on what they hope to see with the drawing of those new maps. And I was in the middle of doing a redistricting fellowship with the Southern Coalition for Social Justice.

So, I was heavily involved in redistricting in the State of Alabama. And you heard a consistent beat of a drum at every hearing. No one said anything that was not centered around give Black voters—give Black people—Black Alabamians another seat at the table. Give us a second district where we can elect the candidate of our choice.

So, our Reapportionment Committee, they heard that over and over and over again. I spoke on that. Anyone who spoke in my city spoke on that, and you heard the same narrative across the State. And so, they went and drew the maps and basically ignored what they—their constituents of the State wanted and what we needed.

And we even had elected officials testified to the same thing. You had State Senators and State Representatives that also spoke in their local districts about the need for us to have another representative at the table.

Right now, if there's anything that's going on in our State, anything I want to encourage a Congress Member to do, I know that reaching out to my—the Republicans in the Congress that represent Alabama. I know that I basically will be ignored. Through my sorority once a year, we have Delta Days, and we go and meet with our elected officials.

And the ones who don't look like me, they typically tend to somewhat ignore us when we are in there letting them know what our legislative priorities are. And Congresswoman Terri Sewell, she's basically the Congress—the lone Congresswoman for the entire State when it comes to Black residents.

And so, that was the narrative. Give us a second district. They chose to ignore us. And even now with SB1, there were about 30 plus people signed up to speak, to include myself. I decided to not

attend law school that day, and I decided that coming to speak at the Capitol to my elected officials was more important. And I did not even have the opportunity to speak. And when you have a public hearing, you have individuals traveling from all across your State.

And so, our elected officials even now, are choosing to ignore us and silence us in the process of making sure that our voices are heard in their decisionmaking process.

Chair BUTLER. Thank you for that. I know we are about at time and I want to honor everyone's time commitments here, particularly given how treacherous the weather sounds. Just one last question that may sound obvious, but I want to ask it on purpose, Ms. Hattix, if you would just sort of close us out on SB1. Do you think that it would have a negative impact on voters of color in Alabama? And if so, how?

Ms. HATTIX. Thank you so much for the question Chair Butler. One thing that we have heard continuously from the public hearings and from the elected officials who are proposing this bill, is that this would not impact activities.

But we actually have history to show the contrary. We have data to show the contrary. And I think in light of the moment we're in, it's important to talk about in the 1960's, there was two women in Alabama who were working to register people to vote, specifically Black Alabamians, who were disabled and illiterate and under similar circumstances to what SB1 is proposing to criminalize, these two Black elderly women were not only arrested, but prosecuted and sent to prison for their activities in assisting absentee ballots to be counted.

And so, when we talk about the impacts of SB1, we're not simply talking about a hypothetical, we're talking about a lived reality. The fact of the matter is that many of the foot soldiers who crossed the Edmund Pettus Bridge are not historical figures to us in Alabama. They are our neighbors. They are our grandmothers. They are living, breathing, walking people who are examples of not only the lengths that the State of Alabama will go to repress and criminalize people, but the actual resilience of Alabamians to stay here and imagine a better future for us.

And so, the effects of SB1 are not just the potential for other people in this long line of history to be incarcerated, charged, and disenfranchised by the State, but the widespread chilling effect that this could have on civic organizations who cannot for very legitimate reasons, engage in what would be literal civil disobedience, defying the State's ban on assisting absentee voters because they would risk their jobs, they would risk their livelihoods.

And so, it's not only the act of criminalization, but the message and widespread chilling impact this would have on our civic organizations to continue to get people to participate in our democracy. And that's a reality that we are not only fearful of but is rooted in a history that we know will come true if SB1 passes.

[Applause.]

Chair BUTLER. Thank you to our witnesses who are appearing—have been appearing today before our Subcommittee and thank you to you all who've come out to also be a part of this field hearing on the Judiciary Subcommittee of the Constitution.

In The New York Times opinion piece that the late Congressman John Lewis submitted, and he asked to be released posthumously after his death. He wrote, “when you see something that is not right, you must say something, you must do something, democracy is not a state.” He said, it is an act, and each generation must do its part to help build what we call the beloved community, a nation and world society at peace with itself.

Through today’s testimony, we’ve heard how we’re still fighting, how each of us are choosing each day to do something, and to do our part. I want to note that I am encouraged by our witnesses today because your work truly proves that each of you are willing to do the work, that each of you have been doing your part.

And I am here because as long as I’m in the Senate, I am going to be doing my part, doing my part to pass the John R. Lewis Voting Rights Act and the Freedom to Vote Act to ensure that the next generation can indeed cast their ballots without facing the discriminatory barriers, without facing the physical dangers and intimidation, without facing all the other methods of suppression that seem to be holding not only Alabama back but even my home State of Mississippi.

So, while I am here, I intend to join you in doing my part in answering Congressman Lewis’s call and all of us doing our part. Thank you-all for coming, and for being a part of this field hearing.

The hearing record will remain open for 1 week, for statements to be submitted into the record. Questions for the record may also be submitted by other Senators by 5 p.m., Eastern, on Friday, March 8, 2024.

Today’s field hearing stands adjourned.

[Whereupon, at 5:09 p.m., the hearing was adjourned.]

[Additional material submitted for the record follows.]

A P P E N D I X

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STATEMENT OF CONGRESSWOMAN TERRI A. SEWELL

BEFORE THE

U.S. SENATE

COMMITTEE ON THE JUDICIARY

SUBCOMMITTEE ON THE CONSTITUTION

HEARING ON

“MODERN DAY VOTING DISCRIMINATION IN ALABAMA”

MARCH 1, 2024

Thank you, Chairwoman Butler and Members of the Subcommittee, for inviting me to speak with you today. Everyday, I am honored that I get the opportunity to represent Alabama's Civil Rights District in Congress. I am the Ranking Member of the House Administration Subcommittee on Elections, and I am the proud author of the John R. Lewis Voting Rights Advancement Act, which will restore the full protections of the Voting Rights Act of 1965.

I'd like to welcome all of you to Montgomery, Alabama, which is the site that kicked off the Civil Rights Movement 69 years ago with the Montgomery Bus Boycott. It was in this very location, that students, faculty, and staff put their lives on the line to end racial discrimination and set the precedent for Black people to not only be afforded equal access to their rights, but be treated with dignity.

Their sacrifices inspired the movements in Birmingham, Tuscaloosa, and in my hometown of Selma, Alabama where foot soldiers like John Lewis, Joanne Bland, and Amelia Boynton Robinson were bludgeoned on the Edmund Pettus Bridge to ensure that all Americans were given equal access to the ballot box.

The foot soldiers' bravery and courage led to the passage of the Voting Rights Act of 1965 - the most consequential civil rights law of our time. But in 2006, the VRA was reauthorized for the last time and extremists began to roll back our progress by determining who could and who could not vote.

In 2013, the Supreme Court gutted the VRA in the *Shelby County V. Holder* decision by removing the preclearance formula, which required states to get approval before the new voting laws were passed.

Across the country old battles have become new again, as states have introduced new policies to make it harder for Black people to vote like creating stricter voter ID laws, limiting early voting options, closing polling locations without notice, and purging thousands of voters off the rolls. In 2023, 14 states enacted 17 restrictive voting laws, and in that same year, lawmakers considered 356 restrictive voting bills in 47 states.

Alabama is the epicenter of voting rights, but according to a 2022 Election Law Journal report, our state is the fifth most difficult state to vote in.

Alabama only allows voters to cast absentee ballots if they can provide an excuse, which is limited to out-of-country travel, long work shifts, military service, or incarceration. If they cannot provide an eligible excuse, they are not able to vote, which is a stark contrast to the 28 states that offer no-excuse absentee voting. Alabama voters can only vote by mail if they are able to provide one of the few acceptable reasons designated by the state. To make matters worse, the state fails to offer opportunities for voters to cast their ballots early.

In February, the state legislature introduced a bill to criminalize some of the ways that voters can receive assistance with their absentee ballots. The bill would make it harder for people to receive assistance from their families and friends as they try to request their ballots, fill out their applications, receive guidance about their ballot, and it would prohibit another person from returning a ballot to an election office on behalf of someone else, including an elderly family member. This proposed legislation would be detrimental for rural, low income, minority voters.

State Republicans are more focused on spreading lies about rampant voter fraud, which only makes voters question if their votes count. Moreover, when we try to find evidence of their claims, studies show that there is only one instance of fraud for every 32 million votes cast.

There are several concerns with Alabama's election management due to the state's constant lack of transparency. For instance, there was no statewide voter education for the Defining Moral Turpitude Act, which would help return people with felony convictions to the voter rolls. More than half of the states in the country require disenfranchised people to be notified about the loss or reinstatement of their voting rights, but Alabama creates unnecessary obstacles like making voters pay all their legal fees before they can vote again.

This attack on voting rights is not by happenstance as Alabama has made it very clear which voters, they intend to suppress by defying the Supreme Court after the ruling of *Allen V. Milligan* in 2023. The court ordered Alabama to draw a map that included two majority-minority districts, but Alabama decided to send over a map that further diluted the power of Black voters.

Now more than ever, we must do our part to restore the full protections of the Voting Rights Act of 1965 and combat modern day attacks on the cornerstone of our democracy.

I never thought that we would be fighting the same fight that the foot soldiers fought 59 years ago, but it is not lost on me, as Corretta Scott King would say, that "struggle is a never-ending process." "Freedom is never really won, and you have to earn it and win it in every generation."

Thank you again to Chairwoman Butler and the Subcommittee for having this vital conversation today. I look forward to our discussion and working together to restore our vote.

**TESTIMONY OF LATOSHA BROWN
CO-FOUNDER
BLACK VOTERS MATTER FUND**

MODERN-DAY VOTING DISCRIMINATION IN ALABAMA

MARCH 1, 2024

I. INTRODUCTION

Chair Butler, Ranking member Cruz and other members of the Subcommittee on the Constitution, my name is LaTosha Brown, and I am a co-founder of Black Voters Matter Fund (“BVM”), a power building southern-based civic engagement organization that focuses on connecting with and supporting grassroots community infrastructure in Black communities in the South. Through voter registration, get-out-the-vote, and voter education, BVM seeks to mobilize Black communities in the South by helping them exercise their right to vote. Since 2017, BVM has played an instrumental role in mobilizing Black voters to overcome voter suppression and access the ballot.

Thank you for the opportunity to testify today on the role that Selma played on the passage of the Voting Rights Act (“VRA”) and present-day discrimination in voting that highlights the continued need for the restoration of the full protections of the VRA.

II. THE SIGNIFICANCE OF SELMA

First, I will share what it was like to grow up in Selma and how Selma became a pivotal turning point in the civil rights movement that culminated in the passage of the Voting Rights Act and has influenced my life’s work.

A. Selma, My Birthplace

I have a deeply personal connection to Selma and to Alabama. My ancestors were brought to Selma as enslaved Africans, and I was raised and spent my formative years here as a member of a family of southern farmers. I attended Selma High School and then continued my studies at Auburn University. Selma is the place where I became an organizer. I found my passion for activism when I took on a job in my twenties as a clerk at a clothing store—there I engaged customers in conversations about the books I was reading. Those conversations led me to realize my passion for community activism and grassroots organizing.

Although I formally became an organizer in my twenties, my interest in organizing began when I was young. When I was a child, my mother and I went to live with my maternal grandparents in Mobile. It was during those years that I developed a close relationship with my grandparents. My grandparents instilled in me the values that I hold dear today.

My grandmother was born in 1910 and could not vote for most of her life because of poll taxes, literacy tests, and other devices designed to keep her from exercising the franchise. The same was true of my grandfather who carried his poll tax receipt in his wallet to remind himself that the right to vote was hard fought and hard won. When my grandmother finally did get the right to vote, she exercised that right with great care—she dressed in her “Sunday best” and went to cast her ballot as if it was a religious exercise. I accompanied her to the polls.

My family was also connected to the Baptist church, which played a significant role in the civil rights movement and in my upbringing. Not only did church serve as a place of worship, it also was an organizing hub for the Black community. Church was the place that brought everyone in the community together and where we organized and strategized to build political power.

These experiences during my formative years inform my work today. As a political strategist, a grassroots organizer, a consultant, and a co-founder of BVM, I strive to mobilize Black communities in the South through community building, political action, and grassroots activism. I hope that my testimony demonstrates the continued need for the Voting Rights Act and inspires Congress to act immediately to restore and further enhance the protections of the VRA in passing the John Lewis Voting Rights Advancement Act.

B. The Role that Selma Played in the Passage of the Voting Rights Act

The 1965 marches that took place in Selma became a “watershed moment” in the civil rights movement that ultimately spurred Congress into action and resulted in the passage of the VRA in 1965.¹ Three marches took place in early 1965 from Selma to Montgomery, the first of which was organized to protest the death of an activist by bringing it to the attention of Alabama’s Governor George Wallace. The first march, on March 7, 1965, led by SNCC chairman John Lewis and SCLC leader Reverend Hosea Williams, became known as “Bloody Sunday” because Alabama law enforcement officials formed a blockade and assaulted the peaceful protestors with

¹ Nat’l Archives, *Selma Marches* (updated Dec. 11, 2023), <https://www.archives.gov/research/african-americans/vote/selma-marches#:~:text=The%20Selma%20Marches%20were%20a%20of%20the%20Jim%20Crow%20South> (last visited Feb. 27, 2024).

tear gas and clubs as they arrived at the Edmund Pettus Bridge. More than sixty protestors were injured and some beaten unconscious.²

The second march on March 9 was led by Reverend Dr. Martin Luther King Jr. and other clergy leaders, but the protestors never got to Montgomery, after the leaders of the march decided to turn back midway to avoid violent confrontation with state troopers.³ Protestors, nevertheless, became the targets of Ku Klux Klan violence. The third march took place on March 21, beginning at the Brown Chapel AME Church in Selma and ending at the Alabama state capitol. Thousands of people joined the march to the capitol, protected by the National Guard and by FBI agents. Demonstrators walked between seven and seventeen miles each day, camping at night, and marching across a two-lane highway. By the end of the march, more than 25,000 protestors had joined.⁴

The marches in Selma represented a turning point in the civil rights movement. On March 17, President Lyndon B. Johnson presented the Voting Rights Act to Congress, and on August 6, President Johnson signed the bill into law in the presence of Dr. King and other leaders.⁵

The Voting Rights Act has been one of the most successful pieces of legislation because of its “immediate impact” in drastically increasing voter registration rates among Black voters and allowing Black voters to access the ballot, in many cases, for the first time.⁶ The VRA was enacted to enforce the guarantees of the Fifteenth Amendment which prohibits the denial or abridgment of the right to vote based on race, color or previous condition of servitude.⁷ The VRA was amended and reauthorized by Congress in 1970, 1975, 1982, 1992, and 2006.⁸

Notably, Section 2 of the VRA placed a nationwide prohibition on voting qualifications based on race, color, or language-minority status.⁹ Section 3(c) permitted federal courts to exercise jurisdiction over a state or political subdivision that the court had found to violate the Fourteenth and Fifteenth Amendments; thus a political subdivision that was subject to Section 3(c) could not change voting laws

² *Id.*

³ Stanford: The Martin Luther King Jr. Research and Education Institute, *Selma to Montgomery March*, <https://kinginstitute.stanford.edu/selma-montgomery-march> (last visited Feb. 27, 2024).

⁴ *Id.*

⁵ *Id.*

⁶ Nat'l Archives.

⁷ U.S. Const. Amend. XV, Section 1.

⁸ Cong. Research Serv., *The Voting Rights Act: Historical Development and Policy Background*, at 18 (Apr. 25, 2023), <https://crsreports.congress.gov/product/pdf/R/R47520>.

⁹ *Id.* at 3.

or practices without court approval.¹⁰ Section 5 established a preclearance formula for federal review of any changes to voting procedures or qualifications in states covered under the coverage formula of Section 4. Under Section 5, any changes within covered jurisdictions had to be precleared by the Attorney General of the United States or after a lawsuit before the U.S. District Court for the District of Columbia.¹¹

III. RECENT SUPREME COURT DECISIONS HAVE NARROWED THE SCOPE OF THE VRA

In the past decade, the Supreme Court issued two decisions that significantly limit the scope of the VRA. These decisions have contributed to an alarming trend in formerly covered jurisdictions, which have passed legislation that disproportionately impacts Black voters resulting in low turnout among Black voters. I briefly touch on each of these decisions below.

A. *Shelby County v. Holder*

In 2013, the U.S. Supreme Court decided *Shelby County v. Holder*, in which the Court invalidated Section 4(b) of the VRA as unconstitutional.¹² Section 4(b) included the coverage formula that determined which jurisdictions were subject to the preclearance procedure in Section 5. Those jurisdictions that “maintained a test or device as a prerequisite to voting as of November 1, 1964, and had less than 50 percent voter registration or turnout in the 1964 Presidential election” were deemed covered jurisdictions under Section 4(b).¹³ This meant that such jurisdictions had to submit any changes to their voting procedures for preclearance by the Attorney General as part of an administrative review or in a lawsuit in the federal district court in the District of Columbia.

The Supreme Court’s reasoning behind its invalidation of Section 5 in *Shelby County* stemmed from the view that “current conditions” did not justify the coverage formula under Section 4(b).¹⁴ The Court observed that the formula was based on “decades-old data and eradicated practices,” that voter registration and turnout had “risen dramatically” in covered states and the racial disparity in those numbers was not compelling to justify preclearance as a remedy.¹⁵

¹⁰ Cong. Research Serv., *Voting Rights Act: Section 3(c) “Bail In” Provision*, at 3–4 (June 27, 2022), <https://crsreports.congress.gov/product/pdf/LSB/LSB10771>.

¹¹ Dep’t of Justice, *About Section 5 of the Voting Rights Act* (updated Nov. 17, 2023), <https://www.justice.gov/crt/about-section-5-voting-rights-act>.

¹² *Shelby Cnty. v. Holder*, 570 U.S. 529 (2013).

¹³ *Id.* at 537.

¹⁴ *Id.* at 550.

¹⁵ *Id.* at 551.

The dissent in *Shelby County* noted the efficacy of Section 5 and its continuing need. The dissent observed that “between 1982 and 2006, DOJ objections blocked over 700 voting changes based on a determination that the changes were discriminatory.”¹⁶ The dissent went on, “Congress found that the majority of DOJ objections included findings of discriminatory intent . . . and that the changes blocked by preclearance were ‘calculated decisions to keep minority voters from fully participating in the political process.’”¹⁷ Relying on this evidence, and more, the dissent concluded it was “sufficient to support Congress’ conclusion that ‘racial discrimination in voting in covered jurisdictions remained serious and pervasive.’” Justice Ginsburg predicted that this would be the case when she warned that “throwing out preclearance when it has worked and is continuing to work to stop discriminatory changes is like throwing away your umbrella in a rainstorm because you are not getting wet.”¹⁸

Much of what the dissent predicted would happen in *Shelby County* materialized almost immediately after the opinion issued. The same day that the Court issued its decision in *Shelby County*, Texas implemented a discriminatory voter ID law, SB 14, which had been previously found to violate Section 5 in *Texas v. United States*.¹⁹ Although SB 14 became the subject of protracted litigation that ultimately resulted in a finding of a Section 2 violation and the law’s repeal several years later, the fact that Texas was emboldened enough to implement SB 14 after the *Shelby County* decision, underscores the impact of not having a functional Section 5 and the need for continued protections under the VRA.

Since then, many states have followed Texas’s example by enacting laws that have made it harder for voters, particularly voters of color, to access the ballot box. As a result of these laws, racial turnout disparities sharply grew. Data from the 2022 midterm elections demonstrates that racial disparities in voter turnout, criminal enforcement of voting laws, access to the ballot, and several other indicators of racial discrimination in voting have continued to worsen in the years since the *Shelby County* decision.

B. *Brnovich v. DNC*

In 2021, the Supreme Court weakened Section 2 of the VRA in *Brnovich v. DNC*.²⁰ In *Brnovich*, the Supreme Court heightened the standard for plaintiffs to bring cases challenging voting laws under Section 2’s “results test.”²¹ These types of

¹⁶ *Id.* at 571.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Texas v. United States*, 997 F. Supp. 2d 133, 159–66 (D.D.C. 2012).

²⁰ *Brnovich v. DNC*, 141 S. Ct. 2321 (2021).

²¹ *Id.* at 2338.

challenges to voting laws, called “vote denial” cases, as in *Brnovich*, involved challenges to two of Arizona’s newly enacted voting procedures that forbade out-of-precinct voting and limited who could collect absentee ballots. At trial, the plaintiffs had shown that these laws made it more difficult for Black, Latino, and Indigenous voters to cast ballots.²²

While the Supreme Court did not completely invalidate Section 2 in the same way that it invalidated the preclearance formula and by extension Section 5 in *Shelby County*, the Court established a narrow and unproven set of “guideposts” that plaintiffs are required to meet to successfully establish a Section 2 vote denial violation.²³

Many of the “guideposts” were novel and had little to do with analyzing racial impact. *Brnovich* has led to a narrowing of Section 2 and consequently limited the ability of civil rights organizations and the Department of Justice to challenge discriminatory vote denial laws.

IV. CASE STUDIES THAT ILLUSTRATE THE CONTINUED NEED FOR ROBUST PROTECTIONS UNDER THE VOTING RIGHTS ACT

A. Redistricting – case study Alabama

The 2020 redistricting of Alabama’s congressional districts demonstrates the continued need for robust protections under the Voting Rights Act. In *Allen v. Milligan*, the Supreme Court affirmed a lower court’s decision to invalidate Alabama’s congressional districting plan under Section 2 and require the legislature to draw a second majority-Black district.²⁴ After the Supreme Court’s decision, the case went back to the district court which ordered Alabama’s legislature to draw a remedial map that complied with its previous order and the Supreme Court’s decision.²⁵

Alabama then drew a map that defied court orders and included only one majority-Black district. After the plaintiffs objected, the district court halted the use of Alabama’s new remedial plan on the grounds that it violated Section 2 and failed to adhere to the court’s previous rulings and ordered a special master to propose three remedial plans and a report and recommendation.²⁶ Meanwhile, Alabama petitioned for an emergency stay of the district court’s order to the Supreme Court which denied

²² *Id.* at 2334–35.

²³ *Id.* at 2336.

²⁴ *Allen v. Milligan*, 599 U.S. 1, 24 (2023).

²⁵ See Doc. 156, *Caster v. Allen*, No. 2:21-cv-01536 (June 20, 2023).

²⁶ See Doc. 226, *Milligan v. Allen*, 2:21-cv-01530 (Aug. 8, 2023) (omnibus order in three district court cases).

the petition. Ultimately, the district court selected one of the special master's remedial maps.

Had Section 5 remained in place, the Alabama legislature would not have been able to introduce and implement, for the first time in 2021, or the second time in 2023, a map that violated Section 2. It would have been required to submit the 2021 map for preclearance which would have required the state to prove that the new map did not have the effect of denying or abridging the right to vote on account of race or color. Without the protections of Section 5, it took more than two years of litigation for Alabama to implement a new congressional plan that afforded Black voters an opportunity to elect candidates of choice.

B. Ballot Access Issues – Case Studies Alabama and Georgia

The adoption of discriminatory policies and the passage of new restrictive voting legislation in Alabama and Georgia demonstrates how states, previously covered under Section 4(b) and subject to preclearance under Section 5, began passing suppressive voting policies and absent these protections.

In 2011, Alabama passed a voter ID law that required all Alabamians to provide a valid form of photo ID from a narrow list of options.²⁷ In 2015, Alabama began closing many DMV offices in majority Black counties. The closures had an impact on Black voters' ability to obtain the necessary ID to vote.²⁸ These closures illustrate the ways that state policies such as closing DMV offices, seemingly unrelated to voting, can directly impact the ability of Black voters to access the franchise.

In 2022, Georgia passed SB 202, an omnibus voter suppression bill with provisions restricting ballot drop boxes, prohibiting voters from receiving food or water while they wait in line to vote, making it harder to vote absentee, and allowing the State Election Board to take over county election boards, which would give the State Election Board unprecedented authority to target jurisdictions with a large population of Black voters and other voters of color.

After SB 202's passage, the gap between participation rates for Black voters and white voters increased. In fact, the racial disparities in voter turnout in Georgia during the 2022 midterm cycle not only persisted but became significantly worse. In the November 2022 election, there was a 13.3 percentage point gap in turnout between White registered voters (58.3 percent) and Black registered voters (45 percent) in Georgia, which was significantly greater than the 8.3 percentage point

²⁷ Ala. Legislature Act No. 2011-673; Photo ID Law Enacted, Ala. Sec'y State, <https://www.sos.alabama.gov/alabama-votes/photo-voter-id/law-enacted> (last visited Feb. 27, 2024).

²⁸ Daniel Luzer, *Alabama Closing Many DMV Offices in Majority Black Counties*, *Governing* (Oct. 2, 2015), <https://www.governing.com/archive/alabama-demands-voter-id-then-closes-drivers-license-offices-in-black-counties.html>.

gap (62.2 percent to 53.9 percent) in the previous midterm election in 2018.²⁹ The disparity between Black and White voter turnout in Georgia in 2022 was actually higher than it had been in any general election in the past decade.³⁰

Many of the restrictions and prohibitions in SB 202 specifically track or target the ways in which Black voters in Georgia vote. For example, data showed that Black voters in Georgia were far more likely to have to stand in long lines to vote than White voters in both the 2020 election and previous election cycles.³¹ Georgia lawmakers, likely aware of this data, included provisions in SB 202 that penalize voters who are forced to wait in long lines by criminalizing the simple act of individuals and charitable organizations providing water to voters while they wait.³²

C. System-Impacted Voters – case study Florida

In the absence of the protections of the VRA, some states have started criminalizing the right to vote by disseminating the narrative of voter fraud.

In April of 2022, Florida enacted legislation establishing an election police unit.³³ The stated purpose of this special police force was to pursue voter fraud and other election crimes following false claims that the 2020 presidential election was stolen.³⁴ The new police force, officially named the Office of Election Crimes and Security arrested 20 individuals in August of 2022 and the racial disparities in arrests were appalling. While Black Floridians made up just 14.5 percent of the state’s population in the 2020 Census, at least 15 of the 20 individuals arrested by the new police force—a whopping 75 percent—were Black.³⁵

²⁹ *Georgia Election Results*, Ga. Sec’y State, <https://sos.ga.gov/page/georgia-election-results> (last visited Mar. 8, 2023).

³⁰ Sara Loving & Kevin Morris, Georgia’s Racial Turnout Gap Grew in 2022, Brennan Ctr. for Justice (Dec. 16, 2022), <https://www.brennancenter.org/our-work/analysis-opinion/georgias-racial-turnout-gap-grew-2022>.

³¹ Stephen Fowler, *Why Do Nonwhite Georgia Voters Have To Wait In Line For Hours? Too Few Polling Places*, NPR (Oct. 10, 2020), <https://www.npr.org/2020/10/17/924527679/why-do-nonwhite-georgia-voters-have-to-wait-in-line-for-hours-too-few-polling-pl>.

³² Complaint, Georgia State Conference of the NAACP v. Brad Raffensperger, 1:21-mi-99999-UNA (N.D. Ga. 2021), <https://lawyerscommittee.org/wp-content/uploads/2021/03/2021-03-28-complaint-as-filed-with-temporary-case-number.pdf>.

³³ Maryam Saleh & Ese Olumhense, *DeSantis’ Election Police Have Largely Flopped in Florida Voter Prosecutions. A New Law Aims to Change That*, Reveal (Mar. 9, 2023), <https://revealnews.org/article/desantis-election-police-have-largely-flopped-in-florida-voter-prosecutions-a-new-law-aims-to-change-that/>.

³⁴ Gary Fineout, *DeSantis signs bill creating one of the nation’s only election police units*, POLITICO (Apr. 25, 2022), <https://www.politico.com/news/2022/04/25/desantis-florida-election-police-units-00027577>.

³⁵ Sergio Bustos, *Crist decries voting-fraud arrests after body cam video shows voters shocked by felony charges*, Tallahassee Democrat, <https://www.tallahassee.com/story/news/politics/elections/2022/10/19/charlie-crist-ron-desantis-voting-fraud-arrests-police-body-camera-florida/10539631002/> (last updated Oct. 20, 2022).

Many of these voters were told that they were eligible to vote and sent voter registration cards directly from the state. Florida's efforts to criminalize elections represent yet another example of the startling trend of voter intimidation under the color of law. These tactics are designed to scare Black voters and other voters of color away from the ballot box, if not outright disqualify them.

This significant racial disparity in arrests under Florida's new law and the failure of the newly established police force to secure convictions³⁶ show that Florida is not serious about ensuring its elections are secure and rather aims to intimidate and harass Black voters and other voters of color.

V. CONCLUSION

Without robust protections like Section 5 of the VRA, states have become emboldened to pass discriminatory redistricting plans, omnibus voter suppression laws, and assembling election integrity units focused on ferreting out alleged voter fraud through covert investigations primarily of Black voters. Therefore, Congress must act immediately to ensure that future elections are administered safely, adequately funded, and freed from suppressive and malicious barriers to registering, casting, and counting ballots so that our democracy can continue to function and Black voters and other voters of color have equal access to the fundamental, precious right to vote.

I call on our leaders in Congress to enact legislation to fully restore the Voting Rights Act of 1965 and ensure that states cannot enact laws that target Black voters and other voters of color. Reforms like many of those included in the John Lewis Voting Rights Advancement Act would provide the U.S. Department of Justice and civil rights organizations with the tools they need to invalidate or successfully challenge discriminatory voting laws that make it increasingly difficult for Black voters and other voters of color to access to the ballot.³⁷

³⁶ Gary Fields et al., *New state voter fraud units finding few cases from midterms*, ASSOC. PRESS (Nov. 26, 2022), <https://apnews.com/article/2022-midterm-elections-voting-rights-florida-georgia-4db14ddecf37e4597cb9b7f20ec499b4>.

³⁷ Ian Weiner, *House of Representatives Passes John Lewis Voting Rights Advancement Act*, LAWYER'S COMM. C.R. UNDER LAW (Aug. 24, 2021), <https://www.lawyerscommittee.org/house-of-representatives-passes-voting-rights-advancement-act/>.

**Written Testimony of
Major Shalela Dowdy
Submitted to
the United States Senate Committee on the Judiciary,
Subcommittee on the Constitution
In connection with its March 1, 2024, hearing entitled
“Modern Day Voting Discrimination in Alabama”**

Chair Butler, Ranking Member Cruz, and other distinguished Committee members. Thank you for the opportunity to submit this testimony concerning my experiences with racial discrimination in voting in Alabama over the past decade.

I am a Major in the United States Army Reserves and graduate of the United States Military Academy at West Point, 2nd Vice President of the Mobile Branch of the Alabama NAACP, and Founding President of Stand Up Mobile, a non-profit voter education and advocacy organization committed to bringing the power of the Black vote to elections at all levels. We believe that it is important for all people to have their voices heard, especially those who are too often excluded from the political, economic, and social institutions that shape their lives.

I submit this testimony as an organizer who is passionate about voting rights and fair access to the ballot. This work led me to become a plaintiff in the ongoing historic voting rights case *Allen v. Milligan*, where alongside my co-plaintiffs we fought against Alabama’s racially discriminatory 2021 Congressional map and 2023 congressional maps. Both the 2021 map and the 2023 map that the Alabama legislature passed in response to the U.S. Supreme Court affirming that its 2021 map likely violated Section 2 of the Voting Rights Act fail to provide Black Alabamians a fair and equal opportunity to elect preferred candidates, and instead unfairly prioritize the needs of white Alabamians and limit Black voters to true influence in one out of seven Alabama districts in the United States House of Representatives.

Alabama’s elected officials and those in positions of power have a continuous history of unfairly minimizing the voting power of Black people and enacting

voting restrictions that make it disproportionately more difficult to vote and have their votes counted. This pattern continued during the redistricting cycle after the 2020 Census. Alabama's Reapportionment Committee was tasked with drawing new Congressional, State House, State Senate, and State School Board Maps. The committee held over 20 public hearings around the state both in person and virtually. I attended the hearing in Mobile in person and virtually attended a number of additional hearings held around the state. At hearing after hearing, Black voters urged the committee to stop unfairly limiting the voting power of Black Alabamians and draw two districts in which Black voters could have a real chance at electing their candidates of choice.

The Reapportionment Committee ignored these voices. It rushed through its process in a matter of a few days and with limited chance for public input, and once again produced a map that unfairly limited Black voting power to one Congressional district. It did so by continuing to crack the Black Belt region into four districts, splitting Montgomery, and failing to unite communities of interest in my hometown of Mobile with those of the Black Belt. The committee also failed to allow citizens the opportunity to provide public commentary on the maps the committee produced. The committee also did not allow the Black elected officials adequate time to review and provide input in the creation of the map. The actions of the Reapportionment Committee showed a lack of responsiveness to Black Alabamians.

In January 2022, the three-judge court agreed with me and the other *Milligan* plaintiffs that Alabama's 2021 congressional map likely unfairly diluted the voting power of Black Alabamians in violation of Section 2 of the Voting Rights Act as it provides "Black voters [] less opportunity than other Alabamians to elect candidates of their choice to Congress." The Court decided that "the appropriate remedy is a congressional redistricting plan that includes either an additional majority-Black congressional district or an additional district in which Black voters otherwise have an opportunity to elect a representative of their choice," but told the Legislature to "be mindful of the practical reality, based on the ample evidence of intensely racially polarized voting adduced during the preliminary injunction proceedings, that any remedial plan will need to include two districts in which Black voters either comprise a voting-age majority or something quite close to it."

After putting the decision on hold, the Supreme Court ultimately agreed that the congressional map violated Section 2 of the VRA. Given this decision, the three-judge court allowed the Alabama legislature to reconvene and produce a congressional map with a second congressional district in which Black voters have

a fair opportunity to elect a candidate of choice. The legislature chose to defy what was ordered by the highest court in our nation. The committee once again produced a map that was not fair and equitable and, in the summer of 2023, did not produce its proposed map in time to allow public commentary on the map. The 2023 map consisted of Congressional District 2 having a Black voting-age population percentage of under forty percent which the State itself admitted was not one in which Black voters would have been able to elect a preferred candidate in any of the past elections they studied.

The words of the Court to Alabama were blunt and unmistakable in calling out Alabama's blatant and purposeful failure to fix the racially discriminatory map. The Court states that it was "deeply troubled that the State enacted a map that the State readily admits does not provide the remedy we said federal law requires" and that it was "disturbed by the evidence that the State delayed remedial proceedings but ultimately did not even nurture the ambition to provide the required remedy." It further explained it was "not aware of any other case in which a state legislature — faced with a federal court order declaring that its electoral plan unlawfully dilutes minority votes and requiring a plan that provides an additional opportunity district — responded with a plan that the state concedes does not provide that district." Section 2 of the Voting Rights Act required Alabama to create "an additional district that affords Black Alabamians, like everyone else, a fair and reasonable opportunity to elect candidates of their choice," but the "2023 Plan plainly fail[ed] to do so."

This time, the Court echoed the voices of Black Alabamians in explaining that it could not "help but find that the circumstances surrounding the enactment of the 2023 Plan reflect a significant lack of responsiveness on the part of elected officials to the particularized needs of Black voters in Alabama." The Court noted the Legislature's purposeful "decision not to create an additional opportunity district" was strong evidence that it "was unwilling to respond to the well-documented needs of Black Alabamians. . . ."

Alabama chose to defy the order and the opinions of both the lower court and the United States Supreme Court, which revealed its dismissive attitude toward the requirements of federal law and to an effort to stop its decades long pattern of excluding Black Alabamians from exercising their full and fair measure of political power. The legislative branch makes the law, but we have the judicial branch in place to expertly interpret the law. Choosing to defy the courts resulted in a court-ordered map being produced that cost Alabama taxpayers over \$500,000, not to

mention the several million dollars in attorney fees they will undoubtedly owe. This is funding that could have gone towards much-needed Medicaid expansion, healthcare issues, education, and so much more.

The Alabama legislature does not seem at all shamed by the Court's rebuke and instead has doubled down this legislative session on another exercise of modern-day voter discrimination in Senate Bill 1, which has passed in the state senate and is moving through the state house. SB 1 will criminalize average Alabamians who assist others with their absentee ballot or the process. By the time this testimony is admitted into the record the bill will likely have passed in the Alabama legislature. This is a dangerous voter suppression tactic that is being implemented that will have drastic negative effects on the Black voting populations and voters with disabilities, who disproportionately rely on ballot assistance to navigate Alabama's burdensome and confusing absentee voting process.

During the 2021 municipal elections in Mobile, Alabama, I had the opportunity to work in the city's absentee election office for three months. I assisted citizens who walked in to complete the in-person absentee ballots due to Alabama not having early voting as an option. I had the opportunity to witness many citizens who do not understand Alabama's complicated absentee process, which requires not only a copy of their photo identification but also signatures by two witnesses or notarization. On election day I assisted with the counting of the absentee ballots and witnessed numerous ballots that were not counted because the citizen did not adequately complete the absentee process. In my experience in Mobile, these ballots and those in need of assistance were disproportionately Black voters. This is not surprising, as I know a federal court in Alabama recently found that Black voters are also less likely to have access to the internet or a computer in their home, less likely to have broadband internet, and less likely to have a computer, smartphone, or tablet compared to white households. The same Court found that "12.7 percent of Black households do not have a vehicle compared to 3.9 percent of White households," and that Black Alabamians with health risks face poverty at higher rates than their White high-risk counterparts. All of this fits with my experience that Black voters are more likely to need access to the absentee voting process, but Alabama law has made it more burdensome for them to use it compared to white voters. SB 1 continues this trend.

In closing, Congress must restore and strengthen the Voting Rights Act. Alabama has shown that it is shameless in consistently enacting discriminatory voting laws, which then must be challenged in court, and which can take years to play out and can negatively effective individuals like myself who are working to assist Black

Voters in Alabama. Requiring jurisdictions like Alabama which persistently continue to discriminate against Black voters and other voters of color to seek preapproval once again for voting changes would help ensure more equal access to the voting process and voting power will go a long way in making the state live up to its professed values and comply with federal law.

Thank you for the opportunity to testify and for being willing to listen to myself and the others who are testifying. It feels reassuring knowing that we have elected officials who care about what is going on out in the districts.

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CONGRESSIONAL TESTIMONY OF
LAUREL HATTIX
STAFF ATTORNEY
AMERICAN CIVIL LIBERTIES UNION OF ALABAMA

For a Hearing On

Modern-Day Voting Discrimination in Alabama

Submitted to the Subcommittee on the Constitution, Civil Rights, and Civil
Liberties of the U.S. House Committee on the Judiciary

Hearing on March 1, 2024

Submitted on February 28, 2024

Introduction

Chairwoman Butler, Ranking Member Cruz, and Members of the Committee, thank you for the opportunity to testify before you.

The American Civil Liberties Union of Alabama was founded in 1965, the same year that the Voting Rights Act (“VRA”) was enacted – to serve as a permanent line of defense against unconstitutional threats and assaults on democracy. Today, with a staff of community organizers, public policy experts, communication professionals, and lawyers, we work in courts, legislatures, and communities to defend the civil liberties and civil rights guaranteed to us by the Constitution and the Bill of Rights. Since our inception as an organization, that work has included ensuring that all Alabamians have access to the ballot and equitable representation in our political processes.

Beginning in the 1960s, the ACLU of Alabama has participated in voting rights litigation in both state and federal courts challenging voting laws and procedures that build – and further entrench – barriers to the ballot. Currently, in my capacity as a staff attorney for the ACLU of Alabama, I am a part of litigation teams challenging Alabama’s 2021 State Senate redistricting map in *Stone v. Allen*, and its congressional maps in *Milligan v. Allen*, under Section 2 of the Voting Rights Act of 1965.

While *Milligan* demonstrates the continued importance of the ability to bring claims under Section 2 of the VRA, my written statements will describe some of the reasons why post-enactment relief in the wake of *Shelby County v. Holder* is insufficient to protect voting rights. It is not merely the history of Alabama which demonstrates the “current need” for the burdens that were previously imposed by Section’s Five preclearance requirement, but current discriminatory practices which continue to keep Black Alabamians “from full and equal participation in the social, economic, and political life of the state.”¹ For these reasons and more, Congress must act to expand the protections of the VRA and restore the preclearance provisions for jurisdictions that persist in enacting discriminatory voting laws and districting schemes.

I. Systematic Use of Violence, Intimidation, and Disenfranchisement Before the Voting Rights Act

¹ *Dillard v. Crenshaw Cnty.*, 640 F. Supp. 1347, 1360 (M.D. Ala. 1986), order dissolved, No. CIV.A.2:85CV1332-MHT, 2006 WL 3392071 (M.D. Ala. July 31, 2006), and order dissolved, No. CIV.A. 2:85CV1332MHT, 2006 WL 3923887 (M.D. Ala. Oct. 3, 2006).

Following the Supreme Court’s decision in *Smith v. Allwright*,² Black Alabamians – who now saw the federal courts as a vehicle to access political rights – began to register to vote en masse.³ In response, the governor and legislature adopted a variety of new measures to minimize Black voter registration, including a state constitutional amendment which gave local officials wide discretion in disqualifying prospective voters and the redrawing of Tuskegee’s municipal boundaries to deprive its growing Black electorate of political power.⁴ These tools of disenfranchisement were again effective. Despite securing victories in landmark voting cases in the 1940s and 1950s, access to the ballot was still out of reach for the majority of Black Alabamians. In Selma, Alabama, despite numerous registration attempts, only two percent of Black locals were on the voting rolls.⁵

After several years of Black voter registration efforts, and violent backlash to these attempts, Dallas County – where Selma is located – had only added 335 new voters out of 30,000 eligible voters. By the end of January 1965, nearly 400 Black individuals had been arrested in actions aimed at accessing their full political, social, and economic rights.⁶

In February of that same year, Judge James Hare requested that law enforcement arrest anyone who was protesting outside the courthouse. On the first day of this enforcement alone, 450 demonstrators were arrested, most of whom were juveniles. When local officials tried to end the protests, demonstrations, and boycotts by arresting Reverend James Orange, approximately 500 Black community-members attempted to march from a church to the Perry County Jail to protest the arrest.⁷ However, when community-members left the church to begin the march, law

² 321 U.S. 649 (1944). See also *Guinn and Beal v. United States*, 238 U.S. 347 (1915).

³ Davidson, C., & Grofman, B. (Eds.). (2021). *Quiet revolution in the South: The impact of the Voting Rights Act, 1965-1990*, at 45. Princeton University Press.

⁴ Davidson, C., & Grofman, B. (Eds.). (2021). *Quiet revolution in the South: The impact of the Voting Rights Act, 1965-1990*, at 46. Princeton University Press.

⁵ “Selma to Montgomery March,” Stanford University: The Martin Luther King, Jr. Research and Education Institute, accessed February 26, 2024, <https://kinginstitute.stanford.edu/encyclopedia/selma-montgomery-march>.

⁶ “Selma to Montgomery March,” Stanford University: The Martin Luther King, Jr. Research and Education Institute, accessed February 26, 2024, <https://kinginstitute.stanford.edu/encyclopedia/selma-montgomery-march>.

⁷ J. Mills Thornton III, *Dividing Lines: Municipal Politics and the Struggle for Civil Rights in Montgomery, Birmingham, and Selma* (Tuscaloosa and London: The University of Alabama Press, 2002), 853-54.

enforcement turned off the street lights, charged into the crowd, and began beating and arresting Black citizens.⁸ Local white citizens joined the melee and attacked the press who had been covering the event.⁹

While attempting to protect his mother from an officer's nightstick, a state trooper shot Jimmie Lee Jackson, a 26-year-old church deacon, civil rights activist, and Army veteran from Marion, twice in the stomach.¹⁰ Mr. Marion died eight days later.¹¹ In total, eight other persons were hospitalized – five Black demonstrators and three white reporters – and 826 persons were charged with unlawful assembly.¹²

At Mr. Jackson's memorial service, James Bevel of the SCLC proposed that activists organize a march from Selma to the state capitol, Montgomery, to force Alabama Governor George Wallace to confront demands for reform to the voter registration process.¹³ Despite orders from Governor Wallace forbidding the march, on March 7, 1965, approximately 600 individuals – many of whom were women and young

⁸ "History and Culture," National Park Service, February 26, 2024, <https://www.nps.gov/semo/learn/historyculture/index.htm>.

⁹ "The House and Selma: Bridging History and Memory," United States House of Representatives, accessed February 26, 2024, <https://history.house.gov/Exhibitions-and-Publications/Civil-Rights/Selma/>.

¹⁰ "Selma to Montgomery March," Stanford University: The Martin Luther King, Jr. Research and Education Institute, accessed February 26, 2024, <https://kinginstitute.stanford.edu/encyclopedia/selma-montgomery-march>; "The House and Selma: Bridging History and Memory," United States House of Representatives, accessed February 26, 2024, <https://history.house.gov/Exhibitions-and-Publications/Civil-Rights/Selma/>.

¹¹ "Selma to Montgomery March," Stanford University: The Martin Luther King, Jr. Research and Education Institute, accessed February 26, 2024, <https://kinginstitute.stanford.edu/encyclopedia/selma-montgomery-march>; "The House and Selma: Bridging History and Memory," United States House of Representatives, accessed February 26, 2024, <https://history.house.gov/Exhibitions-and-Publications/Civil-Rights/Selma/>.

¹² J. Mills Thornton III, *Dividing Lines: Municipal Politics and the Struggle for Civil Rights in Montgomery, Birmingham, and Selma* (Tuscaloosa and London: The University of Alabama Press, 2002), 854.

¹³ "The House and Selma: Bridging History and Memory," United States House of Representatives, accessed February 26, 2024, <https://history.house.gov/Exhibitions-and-Publications/Civil-Rights/Selma/>; J. Mills Thornton III, *Dividing Lines: Municipal Politics and the Struggle for Civil Rights in Montgomery, Birmingham, and Selma* (Tuscaloosa and London: The University of Alabama Press, 2002), 854.

teenagers¹⁴ – led by John Lewis of SNCC and Hosea Williams of SCLC made their way through Selma.¹⁵

When the marchers came to the foot of the Edmund Pettus Bridge, they were confronted by a blockade of state troopers, local law enforcement, and Major John Cloud, who ordered the marchers to disperse.¹⁶ When the marchers refused, law enforcement advanced into the crowd and attacked the protestors with clubs and bullwhips. “Forty canisters of tear gas, twelve canisters of smoke, and eight canisters of nausea gas were used.”¹⁷ The attack lasted for 30 minutes and resulted in the hospitalization of 56 marchers.¹⁸

On the back of a decades-long struggle – in which Black Alabamians and civil rights workers died at the hands of Klansmen, law enforcement, elected officials, and local white mobs – the television coverage of “Bloody Sunday” galvanized public support for voting rights legislation. A few months after the Selma to Montgomery March, on August 5, 1965, Congress passed the Voting Rights Act.¹⁹

II. Sections 4 and 5 of the Voting Rights Act of 1965

The VRA was signed into law on August 6, 1965.²⁰ Section 4 identified states, and political subdivisions, with a history of discrimination in voting. In 1965, the

¹⁴ “Interview with John Lewis,” Southern Oral History Program Collection, November 20, 1973, <https://docsouth.unc.edu/sohp/A-0073/A0073.html>.

¹⁵ “Selma to Montgomery March,” Stanford University: The Martin Luther King, Jr. Research and Education Institute, accessed February 27, 2024, <https://kinginstitute.stanford.edu/encyclopedia/selma-montgomery-march>.

¹⁶ “Selma to Montgomery March,” Stanford University: The Martin Luther King, Jr. Research and Education Institute, accessed February 27, 2024, <https://kinginstitute.stanford.edu/encyclopedia/selma-montgomery-march>.

¹⁷ The Jack Rabin Collection on Alabama Civil Rights and Southern Activists, “Selma-to-Montgomery March,” Penn State University Library, accessed February 27, 2024, <https://libraries.psu.edu/about/collections/jack-rabin-collection-alabamacivil-rights-and-southern-activists/alabama-civil-4>.

¹⁸ The Jack Rabin Collection on Alabama Civil Rights and Southern Activists, “Selma-to-Montgomery March,” Penn State University Library, accessed February 27, 2024, <https://libraries.psu.edu/about/collections/jack-rabin-collection-alabamacivil-rights-and-southern-activists/alabama-civil-4>.

¹⁹ 52 U.S.C. § 10101.

²⁰ “The Voting Rights Act of 1965: Background and Overview,” Congressional Research Service, Updated July 20, 2015, access on February 26, 2024, <https://crsreports.congress.gov/product/pdf/R/R43626/15#:~:text=The%20Voting%20Rights%20Act%20was,preclearance%20of%20new%20laws%20in>.

jurisdictions covered by Section 4 were Alabama, Georgia, Louisiana, Mississippi, South Carolina, Virginia, 39 counties in North Carolina, and specified counties in Arizona and Hawaii.²¹ Although time-limited, Section 4 was reauthorized in 1970, 1975, 1982, and 2006. States covered by Section 4, including Alabama, were subject to the “preclearance” requirements of Section 5.²² Under Section 5, before a state could implement any new law or change in voting, they had to submit the proposed change for “preclearance” approval to either the Attorney General or a three-judge panel. The State had to demonstrate that the proposed change did not have the purpose of “denying or abridging the right to vote on account of race or color.” If the State did not get approval, they were not able to implement the new law or procedural change.

From 1982 to 2006, the Department of Justice objected to 46 proposed changes in voting by Alabama: 7 from the state and 39 from local jurisdictions.²³ Additionally, Section 5 prevented 181 voting changes from being implemented through the more information request process (MIR). Under the MIR, the DOJ issued a letter regarding a change that had been submitted for preclearance and the Alabama jurisdiction withdrew the change, adopted a new change, or did not respond to the letter.²⁴

Beginning in 1966, the DOJ began sending observers to monitor elections in Alabama.²⁵ From 1966 to 2006, the DOJ sent nearly 5,000 observers to Alabama to observe 176 elections in 20 different counties.²⁶

Alabama had a variety of proposed voting laws or procedures blocked through the Section 5 preclearance regime, including redistricting plans, changes to method of

²¹ “The Voting Rights Act of 1965: Background and Overview,” Congressional Research Service, Updated July 20, 2015, access on February 26, 2024, <https://crsreports.congress.gov/product/pdf/R/R43626/15#:~:text=The%20Voting%20Rights%20Act%20was,preclearance%20of%20new%20laws%20in.>

²² James Blacksher, Edward Still, Jon M. Greenbaum, Nick Quinton, Cullen Brown & Royal Dumas, *Voting Rights in Alabama: 1982-2006*, 17 S. CAL. REV. L. & SOC. JUST. 249 (2008).

²³ James Blacksher, Edward Still, Jon M. Greenbaum, Nick Quinton, Cullen Brown & Royal Dumas, *Voting Rights in Alabama: 1982-2006*, 17 S. CAL. REV. L. & SOC. JUST. 249 (2008).

²⁴ James Blacksher, Edward Still, Jon M. Greenbaum, Nick Quinton, Cullen Brown & Royal Dumas, *Voting Rights in Alabama: 1982-2006*, 17 S. CAL. REV. L. & SOC. JUST. 249 (2008).

election, candidate qualifying procedures, voter registration procedures, voter purge and reidentification procedures, candidate nominating procedures, and even the annexation of a school district.²⁷

The employment of preclearance procedures, which had prevented Alabama from implementing discriminatory voting laws or procedures for years, abruptly ended when the Supreme Court handed down their 5-4 decision in *Shelby County, Ala. v. Holder*.

III. *Shelby County, Ala. v. Holder*

Shelby County, Alabama filed a lawsuit against the U.S. Attorney General challenging the constitutionality of Sections 4 and 5 of the VRA.²⁸ Shelby County argued that the preclearance sections were unconstitutional due to advances in voting rights for minorities and the fact that only certain states and political subdivisions were required to obtain preclearance.

On June 25, 2013, in a 5-4 decision, the U.S. Supreme Court determined that Section 4 of the VRA was unconstitutional.²⁹ In the majority opinion, the Court ruled that Section 4 identified jurisdictions for preclearance based on historical data, but the formula was not responsive to the present conditions. By striking down the preclearance formula in Section 4, the effect of their decision was to nullify Section 5.

Over ten years later, the absence of the preclearance provisions and the impact of the Court's decision in *Shelby County* is evident in Alabama.

III. Alabama Post-*Shelby County*

Post-*Shelby County*, Alabama is the only state in the country where federal courts have twice found that a jurisdiction engaged in intentional racial discrimination and required those jurisdictions to submit to preclearance under Section 3.³⁰ But litigating for post-enactment relief is an expensive, time-consuming tool and one that often allows discriminatory laws to take effect before parties can obtain relief in court. It cannot bear the weight of the current conditions. That is why stronger voting rights protections and preclearance regimes are necessary to address present

²⁸ *Shelby County v. Holder*, 570 U.S. 529 (2013).

²⁹ *Shelby County v. Holder*, 570 U.S. 529 (2013).

³⁰ Deuel Ross, "Voting Rights in Alabama: 2006 to 2022," 25 U. PENN. J. CON. L. 252 (2023).

racial discrimination in voting. The current landscape of Alabama demonstrates why these protections are necessary.

a. Data on Registration and Voter Turnout Post-*Shelby County*

Public data on voter registration and turnout in Alabama is available on the Secretary of State's (SOS) website, including data broken down by race.³¹ This data, combined with data from the United States Census Bureau,³² plainly demonstrates that racial disparities in voter registration and turnout currently exist in Alabama and have widened since *Shelby County*.³³

According to data reported by the SOS, in the 2020 general election, white turnout was at 66.3%, compared with Black turnout of 57.0%, which is a 9.3 percentage point gap statewide. In some counties, white voter registration outpaced Black voter registration by double digits. For example, in Elmore County, there was a 16.2 percentage point gap between white voter registration and Black voter registration.

Political scientists have repeatedly affirmed that access to resources – specifically, socioeconomic resources – is an important factor in whether an individual votes because “socioeconomic status is related to the available time, money, and civic skills an individual can devote to overcoming the cost of voting.”³⁴ It is both a historic and contemporary reality³⁵ that the state of Alabama has intentionally constructed systems which “keep its black citizens economically, socially, and politically downtrodden, from the cradle to the grave.”³⁶ In 2021, the median

³¹ Expert Report of Dr. Traci Burch in *Stone v. Allen*, No. 2:21-cv-01531-AMM (N.D. Ala. Feb. 2, 2024).

³² Burch Expert Report.

³³ Burch Expert Report.

³⁴ Burch Expert Report.

³⁵ See Mann, Bryan, and Rogers, Annah. (2021), *Segregation Now, Segregation Tomorrow, Segregation Forever? Racial and Economic Isolation and Dissimilarity in Rural Black Belt Schools in Alabama*. *Rural Sociology*, 86: 523-558 and “Justice Department Secures Resolution in Madison County, Alabama, School Desegregation Case.” Available online <https://www.justice.gov/opa/pr/justice-department-secures-resolution-madison-county-alabama-school-desegregation-case>. Accessed 29 Jan 2024.

³⁶ *Dillard v. Crenshaw Cnty.*, 640 F. Supp. 1347, 1357 (M.D. Ala. 1986), order dissolved, No. CIV.A.2:85CV1332-MHT, 2006 WL 3392071 (M.D. Ala. July 31, 2006), and order dissolved, No. CIV.A. 2:85CV1332MHT, 2006 WL 3923887 (M.D. Ala. Oct. 3, 2006).

household income for Black Alabama households was \$36,104, compared with \$62,545 for white Alabama households.³⁷

Socioeconomic disparities also fuel disparities in access to transportation. In Alabama, Black households are more than twice as likely to lack access to a vehicle than white households.³⁸ The state of Alabama has continuously exploited these conditions to build further barriers to the ballot.

In 2015, the United States Department of Transportation announced that they had opened an investigation into whether Alabama’s proposed selective closure of more than 30 driver’s license offices would disproportionately impacted Black citizens ability to register to vote in violation of the VRA and Title VI of the Civil Rights Act.³⁹ Alabama implemented strict voter ID laws in 2014 – after they no longer were subject to Section 5 preclearance – that required voters to show a limited number of state-issued photo IDs in order to vote. In 2016, after federal transportation officials concluded that the office closures would disproportionately impact Black residents in the Black Belt region, the Alabama Law Enforcement Agency agreed to cancel the closures, expand the hours of operation for driver’s license offices throughout the Black Belt region, and develop a community participation plan to inform potential voters about these services.⁴⁰

In 2020, a federal court explained after a full trial on the merits that Alabama’s restrictive absentee voting laws “enacted in the 1990s” and still in place today “disproportionately disadvantaged the rural Black citizens who historically relied on absentee voting. Because these citizens regularly worked long hours outside their counties and often lacked access to vehicles, they struggled to reach ‘far-flung polling places’ on Election Day. Alabama’s rural Black Belt, which is predominately Black, thus saw sharp declines in the number of absentee ballots cast.”⁴¹ That same court found that Alabama’s requirement that absentee voters have their ballot witnessed by two other individuals or have their ballot envelope notarized violated

³⁷ Burch Expert Report.

³⁸ Burch Expert Report.

³⁹ “U.S. Department of Transportation to Investigate Possible Discrimination through Alabama Driver License Office Closures,” U.S. Department of Transportation (Dec. 9, 2015), <https://www.transportation.gov/briefing-room/us-department-transportation-investigate-possible-discrimination-through-alabama>.

⁴⁰ Melanie Zanona, “Feds: Closing driver’s license offices in Ala. violates civil rights,” *The Hill*, Dec. 28, 2016.

⁴¹ *People First of Alabama v. Merrill*, 491 F. Supp. 3d 1076, 1107 (N.D. Ala. 2020) (internal citations omitted).

Section 2 of the VRA in the context of the COVID 19 pandemic.⁴² The court found that the interaction of the witness requirement with “the totality of the circumstances’ people of color face, e.g. disparities in health, COVID-19 risks, and access to critical resources for safely adhering to the witness requirement like transportation, funds for a notary, technology, and internet access” created these unequal outcomes.⁴³ The court further found “that the history of discrimination shows racial bias in the Alabama community caused the alleged vote-denial or abridgment.”⁴⁴

In sum, Alabama continues to enact policies which exploit existing disparities in social, political, and economic life, to construct barriers to Black Alabamians who want to engage in civic life.

b. The First Black Mayor, Locked Out of Town Hall

Newborn, Alabama, is a one-square mile town in Hale County.⁴⁵ Hattie Hollis, an 83-year-old resident who was born and raised in the town, could not recall a single election in the town’s history.⁴⁶ According to filings in federal court, the town has not held elections in 60 years, as the title of mayor was simply passed down.⁴⁷

In 2020, Patrick Braxton became Newbern’s first Black mayor by operation of law. When Braxton approached the incumbent, Haywood “Woody” Stokes III, for the qualifying papers, he was told that Newbern did not hold elections.⁴⁸ But, Braxton traveled to the county seat, filed the necessary paperwork, and paid the qualifying

⁴² *People First of Alabama v. Merrill*, 491 F. Supp. 3d 1076, 1169 (N.D. Ala. 2020).

⁴³ *People First of Alabama v. Merrill*, 491 F. Supp. 3d 1076, 1172 (N.D. Ala. 2020).

⁴⁴ *People First of Alabama v. Merrill*, 491 F. Supp. 3d 1076, 1174 (N.D. Ala. 2020).

⁴⁵ Lee Hedgepeth, “He Became the First Black Mayor of Newbern, Alabama. A White Minority Locked Him out of Town Hall,” *Tread* (Jun. 5, 2023), <https://www.treadbylee.com/p/he-became-the-first-black-mayor-of>.

⁴⁶ Lee Hedgepeth, “He Became the First Black Mayor of Newbern, Alabama. A White Minority Locked Him out of Town Hall,” *Tread* (Jun. 5, 2023), <https://www.treadbylee.com/p/he-became-the-first-black-mayor-of>.

⁴⁷ Lee Hedgepeth, “He Became the First Black Mayor of Newbern, Alabama. A White Minority Locked Him out of Town Hall,” *Tread* (Jun. 5, 2023), <https://www.treadbylee.com/p/he-became-the-first-black-mayor-of>.

⁴⁸ Kyle Whitmire, “A Fight for Rights and Control in a Black Belt Town Without Election,” *AL.Com* (Jul. 20, 2023), <https://www.al.com/news/2023/07/a-fight-for-rights-and-control-in-a-black-belt-town-without-elections.html>.

fee to run for mayor.⁴⁹ The former white mayor, admitted in court filings that he did not file the appropriate paperwork to qualify for the office of mayor.⁵⁰

Patrick Braxton, as the only qualifying mayoral candidate, was sworn in as mayor in November of 2020. Because none of the incumbent city council members had qualified to run, under Alabama law, Mayor Braxton had the legal authority to fill the vacancies by appointment. The County Circuit judge swore both Mayor Braxton and his appointed council into office on the same day.⁵¹ It was the first time the Alabama town had been represented by politicians that reflected its majority-Black population.

But then, according to a federal civil rights lawsuit filed by Mayor Braxton, former members of the prior majority-white council held an unpublicized special election to fill their own seats.⁵² After appointing themselves as the town council, they met again, in private, to claim that Stokes was the mayor.⁵³

Mayor Braxton remains locked out of town hall.⁵⁴ He was denied access to the city's bank accounts. He alleges that one day he was run off the road.⁵⁵ Mayor Braxton's federal lawsuit is still ongoing, but he has announced he is running for mayor again in 2025.⁵⁶

The conditions in Newbern reflect that the history of intimidation, suppression, and disenfranchisement of not merely Black voters, but Black public officials, is not merely a history – but a present reality.

⁴⁹ <https://www.treadbylee.com/p/he-became-the-first-black-mayor-of>

⁵⁰ <https://www.treadbylee.com/p/he-became-the-first-black-mayor-of>

⁵¹ Kyle Whitmire, “A Fight for Rights and Control in a Black Belt Town Without Election,” AL.Com (Jul. 20, 2023), <https://www.al.com/news/2023/07/a-fight-for-rights-and-control-in-a-black-belt-town-without-elections.html>.

⁵² <https://www.treadbylee.com/p/he-became-the-first-black-mayor-of>

⁵³ <https://www.treadbylee.com/p/he-became-the-first-black-mayor-of>

⁵⁴ Kyle Whitmire, “A Fight for Rights and Control in a Black Belt Town Without Election,” AL.Com (Jul. 20, 2023), <https://www.al.com/news/2023/07/a-fight-for-rights-and-control-in-a-black-belt-town-without-elections.html>.

⁵⁵ Kyle Whitmire, “A Fight for Rights and Control in a Black Belt Town Without Election,” AL.Com (Jul. 20, 2023), <https://www.al.com/news/2023/07/a-fight-for-rights-and-control-in-a-black-belt-town-without-elections.html>.

⁵⁶ Kyle Whitmire, “A Fight for Rights and Control in a Black Belt Town Without Election,” AL.Com (Jul. 20, 2023), <https://www.al.com/news/2023/07/a-fight-for-rights-and-control-in-a-black-belt-town-without-elections.html>.

c. SB1: Moving from Disenfranchisement to Criminalization

The current barriers to Black Alabamians accessing the ballot go beyond disenfranchisement. In 1979, Julia Wilder – an elderly civil rights worker from rural Pickens County, Alabama, along with her friend and then president of the local NAACP branch, 51-year-old Maggie Bozeman, were convicted of three counts of voting fraud.⁵⁷ Their crime: assisting elderly and illiterate Black citizens in filling out their absentee ballots. At the time of their conviction, Pickens County – which was approximately 40% Black, had no Black elected county officials.⁵⁸ For years, Mrs. Bozeman and Mrs. Wilder, who was president of a Pickens County voters' group and an officer with the SCLC, had led voter registration and turnout efforts.

An all-white jury found them guilty of voter fraud for their assistance and Circuit Court Judge Clatus Junkin sentenced Mrs. Wilder to five years in prison and Mrs. Bozeman to four.⁵⁹ When the judge announced his decision, a predominately Black crowd of approximately 300 courtroom spectators broke out into the civil rights song, "We Shall Not Be Moved."⁶⁰ Mrs. Bozeman, a grammar schoolteacher, was fired from her job after the conviction.⁶¹

Both elders appealed their convictions, but after Alabama courts refused to provide the women relief – despite noting that the testimony of the witnesses was

⁵⁷ Art Harris, "Pickens County Flare-Up: The Story of 2 Blacks Found Guilty," *The Washington Post* (Feb. 6, 1982),

<https://www.washingtonpost.com/archive/politics/1982/02/06/pickens-county-flare-up-the-story-of-2-blacks-found-guilty/5fdc01a5-35f2-46a7-94eb-01bba7e47418/>.

⁵⁸ Reginald Stuart, "2 Alabama Rights Workers are Jailed for Voting Fraud," *The New York Times* (Jan. 12, 1982), <https://www.nytimes.com/1982/01/12/us/2-alabama-rights-workers-are-jailed-for-voting-fraud.html>.

⁵⁹ Art Harris, "Pickens County Flare-Up: The Story of 2 Blacks Found Guilty," *The Washington Post* (Feb. 6, 1982),

<https://www.washingtonpost.com/archive/politics/1982/02/06/pickens-county-flare-up-the-story-of-2-blacks-found-guilty/5fdc01a5-35f2-46a7-94eb-01bba7e47418/>.

⁶⁰ Reginald Stuart, "2 Alabama Rights Workers are Jailed for Voting Fraud," *The New York Times* (Jan. 12, 1982), <https://www.nytimes.com/1982/01/12/us/2-alabama-rights-workers-are-jailed-for-voting-fraud.html>.

⁶¹ Art Harris, "Pickens County Flare-Up: The Story of 2 Blacks Found Guilty," *The Washington Post* (Feb. 6, 1982),

<https://www.washingtonpost.com/archive/politics/1982/02/06/pickens-county-flare-up-the-story-of-2-blacks-found-guilty/5fdc01a5-35f2-46a7-94eb-01bba7e47418/>.

“confusing and conflicting.”⁶² Judge Junkin denied the women probation.⁶³ Seven armed deputies escorted both women to Tutwiler prison. After widespread community protest, Alabama Governor Fob James negotiated a work-release program where the women were transferred to Tuskegee to serve out their sentences.

While again, the harrowing story of two women facing criminal prosecution for assisting elderly, illiterate Black voters seems as though it comes from a distant past, in the current Alabama legislature session, ten senators have sponsored Senate Bill 1 (SB1). SB1 would make it a felony to provide assistance to absentee voters.

The proposed legislation would make it a Class C felony, punishable by up to 10 years in prison, for a third party to receive payment or a gift for distributing, ordering, requesting, collecting, completing, prefilling, obtaining, or delivering an absentee ballot application. The legislation does not define the term “gift.”

Additionally, the proposed legislation would make it a Class B felony, punishable by up to 20 years in prison, for any person who pays or provides a gift to a third party to distribute, order, request, collect, prefill, complete, obtain or deliver a voter’s absentee ballot application. In Alabama, other Class B felonies offenses include manslaughter, statutory rape, and theft of property in the first degree.

At a public hearing on the bill, held less than one month ago, community members packed the hearing room, including Barbara Manuel – the President of the National Federation of the Blind of Alabama – who testified as to how this bill would

⁶² Reginald Stuart, “2 Alabama Rights Workers are Jailed for Voting Fraud,” *The New York Times* (Jan. 12, 1982), <https://www.nytimes.com/1982/01/12/us/2-alabama-rights-workers-are-jailed-for-voting-fraud.html>.

⁶³ Art Harris, “Pickens County Flare-Up: The Story of 2 Blacks Found Guilty,” *The Washington Post* (Feb. 6, 1982), <https://www.washingtonpost.com/archive/politics/1982/02/06/pickens-county-flare-up-the-story-of-2-blacks-found-guilty/5fdc01a5-35f2-46a7-94eb-01bba7e47418/>.

criminalize the work of volunteers and voting rights organizations that aim to assist disabled voters.⁶⁴ Only one member of the public spoke in favor of the bill.⁶⁵

Despite a statement from the Senate Governmental Affairs Chairperson that he did not plan to hold a vote on the bill (as a substitution was introduced that the public did not previously have access to), SB1 passed out of committee in a 7-3 vote.⁶⁶

In the year 2024, the Alabama legislature is fighting to pass a bill that would not merely prevent churches, non-partisan organizations, and volunteers from assisting individuals in need of assistance from accessing absentee ballots, but would criminalize this behavior. Rather than investing public resources into ensuring that Alabamians have an opportunity to participate in political processes, the legislature is spending its resources criminalizing a problem that does not exist.

While proponents claim this bill is necessary to prevent fraud through absentee ballot return support, there is no evidence of widespread voter fraud in Alabama. Alabama law already strictly limits ballot return and the criminal penalties for violating these laws are already printed on absentee ballot applications. Even according to a database from the Heritage Foundation—which nonpartisan, independent researchers have called “grossly exaggerated and devoid of context”⁶⁷—found only 20 cases even charging any type of election fraud occurred from 2000 to 2023.⁶⁸ A federal court in Alabama found in 2020 that “voter fraud rarely occurs today, and the defendants point to only two instances of voter fraud convictions

⁶⁴ Jemma Stephenson, “Alabama Senate Committee Approves Restrictions on Absentee Ballot Assistance Amid Confusion,” *Alabama Reflector* (Feb. 7, 2024), <https://alabamareflector.com/2024/02/07/alabama-senate-committee-approves-restrictions-on-absentee-ballot-assistance-amid-confusion/>.

⁶⁵ Jemma Stephenson, “Alabama Senate Committee Approves Restrictions on Absentee Ballot Assistance Amid Confusion,” *Alabama Reflector* (Feb. 7, 2024), <https://alabamareflector.com/2024/02/07/alabama-senate-committee-approves-restrictions-on-absentee-ballot-assistance-amid-confusion/>.

⁶⁶ Jemma Stephenson, “Alabama Senate Committee Approves Restrictions on Absentee Ballot Assistance Amid Confusion,” *Alabama Reflector* (Feb. 7, 2024), <https://alabamareflector.com/2024/02/07/alabama-senate-committee-approves-restrictions-on-absentee-ballot-assistance-amid-confusion/>.

⁶⁷ Rudy Mehrbani, *Heritage Fraud Database: An Assessment*, Brennan Ctr. (Sept. 8, 2017), <https://www.brennancenter.org/our-work/research-reports/heritage-fraud-database-assessment>.

⁶⁸ “Election Fraud Cases,” The Heritage Foundation, accessed February 26, 2024, <https://www.heritage.org/voterfraud/search>.

secured in Alabama since the 1990s.”⁶⁹

In fact, the last case of voter fraud in Alabama identified by the Heritage Foundation was when David Cole, a member of the Alabama House of Representatives, was charged with one count of felony false registration after falsely claiming he resided in a different state house district during the 2022 primary and general elections.⁷⁰ And yet, potentially this week, the Alabama legislature could vote to institute this unnecessary and extreme law.

Without the decision by the Supreme Court in *Shelby County*, SB1 would be subject to the preclearance requirements of the VRA. But, without the preclearance procedures, Alabamians who face criminal penalties for promoting election participation – in a state where only 38.5% of residents cast ballots in the 2022 midterms – must wait on costly, uncertain, and post-enactment litigation to address any discriminatory impact of SB1 if it is passed. These laws show that a new coverage formula like the one proposed by the John Lewis VRAA is necessary to ensure that jurisdictions like Alabama that persist in enacting discriminatory voting laws have review of those laws before they can harm voters.

Conclusion

The Court’s decisions since 2013 demonstrate that Section 2 of the VRA remains a litigation tool for preliminary relief. However, unlike the previous pre-clearance regime that the Court struck down in *Shelby County*, Section 2 claims can only be filed in court after a new voting law or policy is already enacted. Plaintiffs must go to court to litigate their claims – a process which may take years and often cost millions – to even have an opportunity for a judge to strike down the law or order that the practice must temporarily stop. In between the filing and eventual resolution of these suits, the discriminatory law or practice remains in place. Unlike relief which can be quantified in monetary terms, there is no relief for the irrevocable impact of multiple election cycles which may have taken place under unconstitutional conditions.

I thank you again for the opportunity to testify in front of this subcommittee on these critical issues.

⁶⁹ *People First of Alabama v. Merrill*, 491 F. Supp. 3d 1076, 1107 (N.D. Ala. 2020).

⁷⁰ “Election Fraud Cases,” The Heritage Foundation, accessed February 26, 2024, <https://www.heritage.org/voterfraud/search>.

**LaTosha Brown
Co-Founder
Black Voters Matter Fund
Questions for the Record
Submitted March 8, 2024**

QUESTIONS FROM SENATOR BOOKER

1. In your testimony you discussed the immediate negative impact of the *Shelby County* decision, including Texas moving forward with a discriminatory voter ID law the same day that the Supreme Court issued its ruling. Can you speak more to the chilling effect this decision had on voter access and the ability of Black voters and other voters of color to make their voices heard at the ballot box?

As I stated previously in my testimony, the *Shelby County* decision had profound impacts on voter access. *Shelby County* did away with the formula that determined which states and jurisdictions with a history of discrimination in voting were required to submit any changes to voting laws and procedures for federal review by the U.S. Department of Justice or the federal district court in the District of Columbia. Since the *Shelby County* decision, formerly covered states have passed a series of suppressive voting laws that have essentially chipped away at voting rights in many different ways resulting in, what I refer to as a “death by a thousand paper cuts” situation. By restricting different aspects of the voting process, including by limiting the methods of voting usually used by Black voters, these laws have disproportionately impacted Black voters and other voters of color.

Following the 2020 elections, Georgia passed SB 202, the omnibus voter suppression law passed by Georgia that is currently being challenged by various groups in court. This is a prime example of a law that aims to chip away at voting access through its various individual provisions that, taken together, have a cumulative effect on the ability of Black voters and voters of color to cast ballots. The provisions of the Georgia law include:

- **Voters are required to enter their Georgia Driver’s license number or Georgia State ID number on their absentee ballot applications. 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 their absentee ballot envelopes when returning the voted ballot.** *Black voters and other voters of color are less likely to have access to internet, printers, or other technology to navigate this process. Therefore, this process makes it difficult for Black voters who do not have ready access to a copier, scanner, or smart phone, to access and copy the necessary ID documents to attach to their absentee ballot application or when returning the ballot if they do not have a Georgia driver’s license or State ID number.*
- **SB 202 criminalizes the “handling” of a completed absentee ballot application except by election officials, law enforcement officers, or a person assisting a disabled voter who signs an oath on the form that the person helped the voter.** *This restriction makes it even more difficult for voters without ready access to a computer, scanner, or smart phone to comply with the requirements of SB 202 in submitting absentee ballot requests electronically to the Secretary of State and to county election offices.*
- **SB 202 also significantly limits the accessibility of absentee ballot drop boxes by making drop boxes available only during the dates and times of early in-person voting and requiring all ballot drop boxes to be located inside early voting locations and only available to be used by voters during the days and hours of early in-person voting.** *This restriction disproportionately impacts the Metro Atlanta counties which serve the state’s largest populations of Georgia’s Black voters. Thus, this limitation directly targets the largest counties in the state,*

which include Fulton, DeKalb, Gwinnett and Cobb – all of which have significant populations of Black voters and other voters of color.

Georgia is not the only state to pass voter suppressive legislation. Texas, Alabama, North Carolina, Florida and many other states, many of which were covered jurisdictions under Section 5, have passed legislation that has cumulatively chipped away at voter access and in so doing, chilled participation by Black voters in particular. Another example of this is the provision in Texas's SB 1 omnibus legislation that prohibiting local election officials from offering more voting opportunities to voters by offering drive-thru voting, extended voting hours and ballot drop boxes. This law particularly addresses efforts by Harris County, one of the most racially and ethnically diverse counties in the State. During 2020, the County launched innovative initiatives, including offering drive-thru voting, returning mail-in ballots at drop boxes, opening sites for overnight voting, and sending mail-in-ballot applications directly to voters over sixty-five years of age. Harris County's election clerk also introduced new measures to move voters through the polling place quickly, including by allocating machines across polling sites based on known traffic patterns and expected turnout and recruiting more than enough poll workers to operate polling locations during the Early Voting period and on Election Day. Harris County's voter turnout skyrocketed to 67%, its highest in nearly 30 years.

2. Your personal story and family history is deeply interwoven with the struggle for voting rights in Selma and across Alabama. How do the modern-day barriers to voting that you are seeing in your work with Black Voters Matter connect to that long and painful history of discrimination?

In response to this climate of voter suppression, I felt compelled to establish Black Voters Matter Fund with my partner, Cliff Albright. The purpose of the organization is to work closely with partners in the South to ensure that voters had the resources and support that they need to overcome these barriers to the vote. This is what I can contribute to the legacy of the place where I grew up always aware of the contribution that so-called ordinary people made to the right to vote. I do my part by working with hundreds of partners in 26 states (233 counties) to provide resources for voter registration, get out the vote, voter education, voter engagement and litigation to overcome these continuing barriers to the vote.

A personal anecdote about my ninety-year-old aunt Ella Wilmer and her experience voting in the last election serves to illustrate not only the work that my organization does, but also the long and painful history of discrimination that becomes salient through the various ways that states like Georgia and Alabama are undertaking to make it harder for voters like my aunt to cast a ballot. My aunt lives in Selma, Alabama. She was born in 1934 and was thirty-one years old at the time of the Selma marches and the passage of the VRA in 1965. My aunt lived through a time when she could not vote herself on account of her race and fought hard to gain her right to vote.

In the last election in which she voted in 2023, she recalls that Selma got hit by a tornado that resulted in closure of polling sites. This included the polling site at which she had voted in person for years. At this time, my aunt did not know where or how she could vote, and she was not physically able to travel to a different polling site farther from her house. The only way for her to vote was via absentee ballot, but she needed assistance. Fortunately, an election worker from the county helped her fill out an absentee ballot application in her home, obtain an absentee ballot, and return that ballot to the county election office. Without this assistance, my aunt would not have been able to cast a ballot. In addition, I was in Atlanta at the time, and I remember my aunt calling to ask for help and trying to navigate the difficult procedures to help her receive assistance from the county.

After this experience, my aunt lamented to me that voting had gotten harder even though we are sixty years past Bloody Sunday. She remarked that her hope was that voting would have gotten easier. This anecdote is important because it demonstrates the continuity between the past and the present. While the laws and procedures states are now adopting are not facially discriminatory, their effect is to disenfranchise voters like my aunt. My organization uses its grassroots community contacts to help voters like my aunt and others in the community navigate the voting process.

Major Shalela Dowdy
Vice President of Mobile Alabama NAACP
President of Stand Up Mobile
Answer to Questions for the Record
Submitted March 25, 2024

QUESTIONS FROM SENATOR BOOKER

1. In your testimony, you noted that high rates of poverty and lack of access to transportation among Black Alabamians are factors that make it harder for them to navigate the absentee ballot process. In your opinion, how do these types of socioeconomic disparities intersect with and exacerbate the impact of discriminatory voting laws?

Alabama's multi step process to vote by absentee ballot is very complicated. To utilize this option of voting the voter needs to have access to broadband internet, printing, copying, and transportation to deliver their ballot or to vote in person at their county probate court. Those citizens who are affected the most from these socioeconomic disparities are those who are low income and black. Those of African American descent in the state of Alabama are faced with a higher rate of poverty. Citizens who inhabit the rural counties of the state are faced with poverty at an even higher rate. Living in poverty results in the citizen not having access to print out the absentee request form or provide a copy of their ID in order to receive a ballot. These strenuous requirements along with the closing of DMVs in the rural area and a decrease in polling precincts negatively impact Black Alabamians ability to exercise their right to vote. One solution to this problem would be the ability to participate in early voting and same day voter registration. Early voting would eliminate the need to vote absentee because there would be no need to provide an excuse on why the individual is voting early. It would provide easier access to the ballot across multiple days and would allow for the opportunity to acquire transportation to be increased. Better access to the ballot box would greatly improve and increase voter turnout in the state of Alabama. The passage of the John Lewis Voting Rights Advancement Act would significantly increase Black Alabamians access to the ballot box.

2. What message do you think Alabama's repeated efforts to limit Black political power send to young people and future generations? How do you hope to see the landscape change through your work with Stand Up Mobile and other voting rights advocates?

Many young people in the State of Alabama and across the nation are not completely aware of the voter suppression tactics that are strategically currently in place. The message that is being sent to those who are aware is that elected officials from a particular political party will do everything in their power to limit the political voting power of Black Alabamians. It's a reminder

of how impactful our vote has been and continuous to be and a motivator to continue fighting for fair and equitable voting rights. Through my work with Stand Up Mobile and the NAACP I aim to educate the local communities about the voter suppression that is currently ongoing along with inspire them to get involved in the process and lend their voices to the cause. In the future I hope to see elected officials actually taking into consideration what their constituents are expressing. It's a goal to see Alabama catch up with the rest of America when it comes to access to the polls by allowing early voting and same day registration.

RESPONSE TO QUESTIONS FOR THE RECORD
LAUREL HATTIX
STAFF ATTORNEY
AMERICAN CIVIL LIBERTIES UNION OF ALABAMA

For a Hearing On

Modern-Day Voting Discrimination in Alabama

Submitted to the Subcommittee on the Constitution, Civil Rights, and Civil
Liberties of the U.S. House Committee on the Judiciary

Hearing on March 1, 2024

Submitted on March 25, 2024

QUESTIONS FROM SENATOR BOOKER

1. You have litigated numerous voting rights cases. Based on that experience, what are some of the limitations of relying on case-by-case litigation to address discriminatory voting practices, compared to the proactive preclearance regime that existed before the Supreme Court's decision in *Shelby County*?
2. You noted that Alabama continues to enact policies that exploit racial disparities in socioeconomic status, transportation access, and other areas to create barriers to voting. How do these types of issues interact with and magnify the impact voter suppression tactics?

RESPONSE TO QUESTION ONE

Question: You have litigated numerous voting rights cases. Based on that experience, what are some of the limitations of relying on case-by-case litigation to address discriminatory voting practices, compared to the proactive preclearance regime that existed before the Supreme Court’s decision in *Shelby County*?

Answer:

Prior to the Supreme Court’s decision in *Shelby County v. Holder*, the state of Alabama was subject to the “preclearance” requirements¹ of Section 5 of the Voting Rights Act.² Under Section 5, before a state could implement any new law or change in voting, they had to submit the proposed change for “preclearance” approval to either the Attorney General or a three-judge panel.³ The State had to demonstrate that the proposed change did not have the purpose or effect of “diminishing the ability” of voters to vote or denies or abridges their ability to elect candidates of choice on account of race or color.”⁴ If the State did not get approval, they were not able to implement the new law or procedural change.

Alabama had a variety of proposed voting laws or procedures blocked through the Section 5 preclearance regime, including redistricting plans, changes to method of election, candidate qualifying procedures, voter registration procedures, voter purge and reidentification procedures, candidate nominating procedures, and even the annexation of a school district.⁵ However, the employment of pre-clearance

¹ Section 4 of the Voting Rights Act outlined the “coverage formula,” which defined which states or political subdivisions had to submit to Section 5 preclearance. The formula identified jurisdictions which had a history of racial discrimination in voting. Specifically, the formula looked at the voting patterns, practices, and procedures in 1964, 1968, and 1972. “The Voting Rights Act of 1965: Background and Overview,” Congressional Research Service, Updated July 20, 2015, access on February 26, 2024,

<https://crsreports.congress.gov/product/pdf/R/R43626/15#:~:text=The%20Voting%20Rights%20Act%20was,preclearance%20of%20new%20laws%20in>.

² James Blacksher, Edward Still, Jon M. Greenbaum, Nick Quinton, Cullen Brown & Royal Dumas, Voting Rights in Alabama: 1982-2006, 17 S. CAL. REV. L. & SOC. JUST. 249 (2008).

³ “The Voting Rights Act of 1965: Background and Overview,” Congressional Research Service, Updated July 20, 2015, access on February 26, 2024, <https://crsreports.congress.gov/product/pdf/R/R43626/15#:~:text=The%20Voting%20Rights%20Act%20was,preclearance%20of%20new%20laws%20in>.

⁴ 52 U.S.C. § 10304(b)–(d).

procedures, which had prevented Alabama from implementing discriminatory voting laws or procedures for years, abruptly ended when the Supreme Court handed down their 5-4 decision in *Shelby County, Ala. v. Holder*.

Since the decision in *Shelby County*, the main protection the Voting Rights Act affords is found under Section 2. Section 2 prohibits jurisdictions from imposing qualifications, standards, practices, or procedures to deny or abridge the right to vote on account of race, color, or membership in a language minority group.⁶ While Section 2 applies nationwide, and does not have a sunset provision, it is a markedly different tool – and no substitute for – Section 5 preclearance.

First, unlike Section 5 preclearance, plaintiffs may only raise a challenge *after* the potentially discriminatory law or procedure is enacted. This means that even if a lawsuit is filed, the law or procedure may remain in place during election cycles, unless a preliminary injunction is granted, or the lawsuit is eventually resolved. This is even more likely over the last decade due to the expansion of the so-called *Purcell* doctrine, where the Supreme Court has repeatedly blocked lower court orders enjoining discriminatory election laws enjoined within a few months of an election.⁷

Relatedly, even successful case-by-case litigation in the voting rights context is unable to provide full and adequate remedies. Unlike other forms of civil rights litigation, in which impacted persons can be made whole through monetary damages, elections are different. If an election occurs under unconstitutional conditions, the rights of citizens who were impacted by the discriminatory regime have been permanently compromised because an election cannot be re-done. Officials, elected when discriminatory laws and procedures are in place, are not only able to make policy while in office, but also gain the benefits of incumbency. Unlike preclearance regimes, case-by-case litigation can only combat discrimination in future elections: it is unable to provide remedies to victims of an already enacted discriminatory voting regime.

Next, case-by-case litigation requires plaintiffs to go to court to litigate their claims – a process which may take years and often cost millions – to even have an opportunity for a judge to strike down the law or order that the practice must temporarily stop. This is a reality that even the Supreme Court has recognized: “§ 2

⁶ “The Voting Rights Act of 1965: Background and Overview,” Congressional Research Service, Updated July 20, 2015, access on February 26, 2024, <https://crsreports.congress.gov/product/pdf/R/R43626/15#:~:text=The%20Voting%20Rights%20Act%20was,preclearance%20of%20new%20laws%20in>.

⁷ See, e.g., Emily Rong Zhang, *Voting Rights Lawyering in Crisis*, 24 CUNY L. Rev. 123, 137–38 (2021).

litigation in recent years has rarely been successful” and “[s]ince 2010, plaintiffs nationwide have apparently succeeded in fewer than ten § 2 suits.”⁸

Voting rights litigation is resource intensive. It is particularly onerous today because modern voting discrimination is often more subtle than the methods employed when the Voting Rights Act was first enacted. Accordingly, modern voting rights litigation requires expansive investigation, election data, experts versed in complex statistical analysis, historians, social scientists, witnesses – including candidates, elected officials, and community members, in addition to attorneys and plaintiffs. It is therefore common for litigation costs to range from hundreds of thousands of dollars to millions. While costs may eventually be recovered, resource-strapped communities, non-profit legal organizations, and local civil rights attorneys still have to pay these expenses up front, with no guarantee that these expenses will be recouped. Beyond the parties themselves, the Section 2 litigation process can be costly for taxpayers, who must foot the bill if congressional maps are struck down.

Even if impacted voters can muster the resources to bring a lawsuit, these lawsuits regularly take years to be resolved. For example, *Allen v. Milligan* was originally filed on November 16, 2021.⁹ Although the plaintiffs obtained a preliminary injunction against the law in advance of the 2022 elections, the Supreme Court stayed that order while reviewing the case on the merits.¹⁰ The Court ultimately affirmed the preliminary injunction on June 8, 2023,¹¹ but in the meantime an entire election cycle passed in which Black Alabamians voted in racially dilutive districts. Even still, the clock continues to run on this litigation as it took over a year to resolve the question of preliminary relief: the case has not even gone to trial yet. Case-by-case litigation is not well-suited for an urgent political process, which – irrespective of pending litigation – holds annual elections. Both the cost and time-intensive nature of these cases, make case-by-case litigation an insufficient tool to protect voting rights and stop jurisdictions from discriminating against its minority citizens.¹²

⁸ *Allen v. Milligan*, 599 U.S. 1, 29 (2023).

⁹ Compl., No. 2:21-cv-01530-AMM, ECF No. 1 (N.D.A. Ala. Nov. 16, 2021).

¹⁰ *Merrill v. Milligan*, 142 S. Ct. 879 (2022).

¹¹ *Allen v. Milligan*, 599 U.S. 1 (2023).

¹² *South Carolina v. Katzenbach*, 383 U.S. 301, 314 (1966) (“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

Third, the victims – not perpetrators – of voting discrimination have the burden of proving their claims in case-by-case litigation. This is a marked departure from the prior preclearance regime. Under the previous Section 5 preclearance regime, covered jurisdictions had the limited burden of proving that their proposed changes in voting laws or procedures did not have the purpose or effect of discriminating against minority voters. However, in case-by-case litigation, the burden is on the victims of discrimination to prove that the challenged practice resulted in a denial or abridgment of the right to vote based on race, color, or membership in a minority language group: shifting the “advantage of time and inertia” back to the perpetrators of discriminations.¹³

In sum, case-by-case litigation is insufficient to address and remedy discriminatory voting laws and procedures due to the financial, legal, and time burdens imposed on the victims of discrimination to adjudicate their claims. Even successful Section 2 litigation is inadequate to remedy the impact of discriminatory voting regimes, as – unlike relief which can be quantified in monetary terms – there is no relief for the irrevocable impact of multiple election cycles which may have taken place under unconstitutional conditions.

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.”)

¹³ *South Carolina v. Katzenbach*, 383 U.S. 301, 328 (1966).

RESPONSE TO QUESTION TWO

Question: You noted that Alabama continues to enact policies that exploit racial disparities in socioeconomic status, transportation access, and other areas to create barriers to voting. How do these types of issues interact with and magnify the impact voter suppression tactics?

Answer:

Political scientists have repeatedly affirmed that access to resources is an important factor in whether an individual votes because “socioeconomic status is related to the available time, money, and civic skills an individual can devote to overcoming the cost of voting.”¹⁴ It is both a historic and contemporary reality¹⁵ that the state of Alabama has intentionally constructed systems which “keep its black citizens economically, socially, and politically downtrodden, from the cradle to the grave.”¹⁶ These well-documented disparities in educational attainment, socioeconomic status, and access to transportation are further exploited by voting laws and procedures, which suppress and dilute the voting power of Black Alabamians.

In a decision affirmed by the Supreme Court, a three-judge court credited testimony that “because white Alabamians tend to have more education and therefore higher income than Black Alabamians, they tend to be better able than Black Alabamians to afford a car, internet service, a personal computer, or a smart phone; ... take time off from work; ... afford to contribute to political campaigns; ... afford to run for office; ... [and to] have access to better healthcare,” and (2) that “[e]ducation has repeatedly been found to correlate with income [and] independently affects citizens’ ability to engage politically.”¹⁷

¹⁴ Expert Report of Dr. Traci Burch in *Stone v. Allen*, No. 2:21-cv-01531-AMM (N.D. Ala. Feb. 2, 2024).

¹⁵ Mann, Bryan. and Rogers, Annah. (2021), Segregation Now, Segregation Tomorrow, Segregation Forever? Racial and Economic Isolation and Dissimilarity in Rural Black Belt Schools in Alabama. *Rural Sociology*, 86: 523-558 and “Justice Department Secures Resolution in Madison County, Alabama, School Desegregation Case.” Available online <https://www.justice.gov/opa/pr/justice-department-secures-resolution-madison-county-alabama-school-desegregation-case>. Accessed 29 Jan 2024.

¹⁶ *Dillard v. Crenshaw Cnty.*, 640 F. Supp. 1347, 1357 (M.D. Ala. 1986), order dissolved, No. CIV.A.2:85CV1332-MHT, 2006 WL 3392071 (M.D. Ala. July 31, 2006), and order dissolved, No. CIV.A. 2:85CV1332MHT, 2006 WL 3923887 (M.D. Ala. Oct. 3, 2006).

¹⁷ *Milligan v. Merrill*, 582 F. Supp. 3d 924, 1022 (N.D. Ala. 2022), *aff’d sub nom. Allen v. Milligan*, 599 U.S. 1 (2023).

Statewide, Black Alabama households are “more than twice as likely to lack access a vehicle than White Alabama households.”¹⁸ In many states, no-excuse absentee voting offsets the issues individuals’ without transportation face in being able to cast their ballot. Despite the lack of public transportation infrastructure and marked disparities in access to a vehicle, Alabama is just one of fourteen states without no-excuse absentee voting and one of just four states without early in-person voting. Rather than provide a broad right to vote absentee for elderly individuals or for all individuals with a disability, Alabama restricts absentee voting to a limited category of voters.

Alabama’s voting laws not only fail to consider and provide remedies for the socioeconomic disparities which impact voting ability, but actively exploit these disparities. In 2014, Alabama implemented strict voter ID laws, which required citizens to show a limited number of state-issued photo IDs to vote. At the same time, Alabama proposed the selective closure of 30 licensing offices, where Alabamians could obtain these IDs.

An investigation by federal transportation officials concluded that the office closures would disproportionately impact Black residents in the Black Belt region.¹⁹ Alabama’s Black Belt region is predominately rural. The lack of transportation infrastructure in the region already impacted its resident’s ability to access the ballot, but the proposed office closures would have left 12 to 15 counties in the region with no place to obtain the most common form of identification used at the polls.²⁰

In 2020, a federal court explained how Alabama’s restrictive absentee voting laws “disproportionately disadvantaged the rural Black citizens who historically relied on absentee voting . . . [b]ecause these citizens regularly worked long hours outside their counties and often lacked access to vehicles, they struggled to reach ‘far-flung polling places’ on Election Day.”²¹

A February 2020 report by the Alabama Advisory Committee to the United States Commission on Civil Rights echoed these findings:

¹⁸ Burch Expert Report.

¹⁹ Melanie Zanona, “Feds: Closing driver’s license offices in Ala. violates civil rights,” *The Hill*, Dec. 28, 2016.

²⁰ Kyle Whitmire, “Voter ID and Driver’s License Office Closures Black-Out Alabama’s Black Belt,” *AL.com* (Sep. 30, 2015).

²¹ *People First of Alabama v. Merrill*, 491 F. Supp. 3d 1076, 1107 (N.D. Ala. 2020) (internal citations omitted).

The impact of this law on marginalized populations becomes apparent when considering how one might acquire a form of identification the law requires. Recent efforts by the state to close or limit hours at MVD offices, courts, libraries, and other public places where voters might acquire the necessary identification to vote has rendered the photo identification law in Alabama a significant barrier for poor, minority and rural populations in the state.²²

It is not merely that these socio-political disparities exist, or that they alone contribute to disparities in voter access and turnout, but also that the Alabama legislature continues to implement facially neutral laws which further entrench and exploit these factors to suppress Black voting power.

²² “Barriers to Voting in Alabama,” Alabama Advisory Committee to the United States Commission on Civil Rights (Feb. 2020), <https://www.usccr.gov/files/2020/2020-07-02-Barriers-to-Voting-in-Alabama.pdf>.

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**Report on Modern-Day Voting Discrimination in Alabama for the Record
 from the Southern Poverty Law Center**

On behalf of the Southern Poverty Law Center (SPLC), we write following the March 1, 2024 field hearing in Montgomery, Alabama—entitled Modern-Day Voting Discrimination in Alabama¹—to submit for the record our report demonstrating that racial discrimination in voting is an ongoing reality of life for Alabamians of color, and to call for a restored Voting Rights Act to protect the sacred right to vote for all Alabamians.

Established in 1971, the Southern Poverty Law Center (SPLC) is a nonprofit organization founded in Montgomery, Alabama, to help ensure the promise of the Civil Rights Movement became a reality for all, particularly for Black communities in the South, who are all too often the victims of discriminatory policies. Anti-voter policies are no exception, and bills and laws making it harder for Black people and other people of color to vote are a consistent issue in Alabama to this day. The SPLC works to safeguard the civil rights of all people, and in particular to advance the voting rights of Black people and other people of color in Alabama and across the Deep South, in order to secure a more equitable and just society.

Our report, [Selma, Shelby County, & Beyond: Alabama's Unyielding Record of Racial Discrimination in Voting, the Unwavering Alabamians Who Fight Back, & the Critical Need to Restore the Voting Rights Act](#)² presents a comprehensive catalogue of the persistent and acute presence of racial discrimination in voting in Alabama through August 2021. The report first reviews the long history of race-based discrimination in voting in the state, from the 1901 Constitution drafted to establish white supremacy, through Jim Crow and the Civil Rights Movement, to the continued struggle for ballot access for Alabamians of color after the passage of the Voting Rights Act. It then dives in great detail into the state of voting rights for Alabamians of color since 2013. That analysis includes Alabama's strict photo ID law and its discriminatory impact of voters of color, the subsequent closures of photo ID issuing locations and of polling places in predominantly Black jurisdictions, the extreme restrictions on voting access of Alabamians, the impact of those voting restrictions on Black first-time voters on college campuses, the state's ongoing legacy of race-based felony disenfranchisement, the often discriminatory purging of registered voters from the voter rolls, and the impact of neglected

¹ U.S. Senate Committee on the Judiciary, Subcommittee on the Constitution, Field Hearing: Modern-Day Voting Discrimination in Alabama, presided over by Chair Bulter, Montgomery Interpretive Center at Alabama State University, March 1, 2024, <https://www.judiciary.senate.gov/committee-activity/hearings/modern-day-voting-discrimination-in-alabama>.

² Selma, Shelby County, & Beyond: Alabama's Unyielding Record of Racial Discrimination in Voting, the Unwavering Alabamians Who Fight Back, & the Critical Need to Restore the Voting Rights Act, the Southern Poverty Law Center, August 2021, https://www.splcenter.org/sites/default/files/splc_alabama_voting_rights_report_with_exhibits_final.pdf.



election infrastructure on voters of color in the state. Further, the report details the numerous final judgments of voting rights violations and settlement and consent decrees at the state and local level in Alabama, as well as the numerous objection letters from the U.S. Department of Justice in the years before 2013.

We respectfully request this report be included as part of the official hearing record. We also note that, while this report was published in 2021, but the assault on the voting rights of people of color has continued unabated since that time.

During the present legislative session, lawmakers have made restricting voting access a top priority, giving the SB1 designation to a bill that would create felonies for voters offering compensation to neighbors, community members, or civic organizations that provide absentee ballot application assistance. Particularly troubling is that compensation is undefined and can range from a salary paid to staff at a nursing home to gas money to a nephew to a plate of cookies as a thank you gift. And while there is language to exclude disability from such penalties, the stark reality is that there are many who are disabled, but do not possess medical documentation and could be subject to prosecution.

Not only would this bill, which we anticipate will become law this year, unnecessarily criminalize Alabamians seeking assistance with an often confusing, onerous process and those simply supporting their neighbors and community, it will also place an extra burden on Alabamians of color, who are more likely to have a disability than white Alabamians. According to the Yang-Tan Institute on Employment and Disability at Cornell University, in 2022 in Alabama 20.7% of Native Americans and 18.5% of Black people reported a disability, compared to 14.4% of white people.³

The impact of laws like these on Alabamians of color and on democracy is not theoretical. Data from the Census Bureau show the very concrete impact of these laws that make it harder for people of color to vote. In 2012, just before the *Shelby v. Holder* decision nullified preclearance and freed Alabama to pass laws without first ensuring they will not have a discriminatory impact on voters of color, turnout rates among white and Black Alabamians were comparable – 62% of white Alabamians reported voting in the November 2012 election, compared to 63% of Black Alabamians.⁴ By the last presidential election in 2020, the gap between white and Black Alabamian voters had grown dramatically; in the November 2020 election, 62% of white Alabamians reported voting, compared to only 55% of Black Alabamians. This represents a seven percentage point difference, and a drop of eighth percentage points among Black Alabamians,

³ 2022 Disability Status Report: Alabama, Yang-Tan Institute on Employment and Disability, Cornell University, 2022, <https://www.disabilitystatistics.org/report/pdf/2022/2001000>

⁴ U.S. Census Bureau, Voting and Registration in the Election of November 2012, <https://www.census.gov/data/tables/2012/demo/voting-and-registration/p20-568.html>.



relative to their turnout eight years before.⁵ New data from the Brennan Center for Justice demonstrate that the racial turnout gap has grown nationally since the *Shelby* decision, and grown faster in states previously subject to preclearance, like Alabama.⁶

The growing turnout gap between Alabamians of color and white Alabamian voters is not a fluke – it is a new reality, the result of more than a decade without the full protections of the Voting Rights Act (VRA). The VRA for decades helped ensure voters of color in Alabama could access and exercise their fundamental right to vote, a right that has been severely curtailed over the last decade. We thank you and the subcommittee for your attention to the urgent issue of racial discrimination in voting in Alabama and urge you to prioritize legislation restoring, strengthening, and modernizing the Voting Rights Act, so that voters of color in Alabama and across the nation once again enjoy the law’s full protections and are able to be full citizens of our democracy.

We appreciate the opportunity to share our expertise documenting the ongoing, modern-day voting discrimination in Alabama, where the SPLC is based and has operated for more than 50 years. For more information about SPLC’s work protecting and promoting voting rights in Alabama and across the Deep South, please contact Laura Williamson, Senior Policy Advisor for Voting Rights at laura.williamson@splcenter.org. We stand ready to work with subcommittee members to address these critical issues.

⁵ U.S. Census Bureau, *Voting and Registration in the Election of November 2020*, <https://www.census.gov/data/tables/time-series/demo/voting-and-registration/p20-585.html>.

⁶ Kevin Morris and Coryn Grange, *Growing Racial Disparities in Voter Turnout, 2008-2022*, Brennan Center for Justice, March 2024, file:///C:/Users/laura.williamson/Downloads/2024_02_Growing%20Racial_Disparities_in_Voter%20Turnout_Report.pdf.

