

**THE RIGHT SIDE OF HISTORY:
PROTECTING VOTING RIGHTS IN AMERICA**

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THE RIGHT SIDE OF HISTORY: PROTECTING VOTING RIGHTS IN AMERICA

TUESDAY, MARCH 12, 2024

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

The Committee met, pursuant to notice, at 10 a.m., in Room G50, Dirksen Senate Office Building, Hon. Richard J. Durbin, Chair of the Committee, presiding.

Present: Senators Durbin [presiding], Whitehouse, Klobuchar, Coons, Blumenthal, Hirono, Booker, Padilla, Ossoff, Welch, Butler, Graham, Grassley, Cornyn, Lee, Cruz, Hawley, Cotton, Tillis, and Blackburn.

OPENING STATEMENT OF HON. RICHARD J. DURBIN, A U.S. SENATOR FROM THE STATE OF ILLINOIS

Chair DURBIN. This meeting of the Senate Judiciary Committee will come to order. Today the Committee will examine the ongoing assault on voting rights and the continued need for the John R. Lewis Voting Rights Advancement Act, which Senator Warnock and I recently introduced with 48 of our colleagues. Before we begin, I'd like to turn to a video that demonstrates why this legislation is essential for our democratic rights protection.

[Video is presented.]

Chair DURBIN. Last week, we commemorated the 59th anniversary of Bloody Sunday in Selma, Alabama. On that infamous day in 1965, 600 Americans, led by a young John Lewis and Reverend Hosea Williams, were met by police wielding billy clubs, bullwhips, and tear gas as they marched across the Edmund Pettus Bridge to protest the disenfranchisement of Black Americans. Just months later, Congress finally passed legislation to protect every American's right to vote. The Voting Rights Act, or VRA, passed with 77 votes in the Senate, an overwhelming bipartisan majority. When the VRA was last authorized in 2006, not one Senator—not one Senator, Democratic or Republican—voted against the bill.

Next year will mark 60 years since the Bloody Sunday and the passage of the Voting Rights Act, but as a result of a series of misguided Supreme Court decisions, there's been a significant deterioration of the fundamental right to vote in America. In 2013, five Republican-appointed Justices on the Supreme Court dismantled a key feature of the Voting Rights Act by throwing out the formula for jurisdictions subject to preclearance. Preclearance had required States and localities with a history of voting discrimination to submit any changes to voting laws and procedures to the Justice De-

partment or a Federal judicial panel for review. Congress repeatedly reauthorized that formula with bipartisan support, overwhelming bipartisan support, in light of reams of evidence demonstrating its continued value.

In the days following *Shelby County v. Holder*, Republican-led States immediately moved to enact discriminatory voter suppression efforts. Voters now wait years for court decisions when they challenge these laws and have to endure elections with these restrictions in place even when they're later found to be violating Federal law. In 2021, the Court's right-wing majority continued its assault on the Voting Rights Act with its decision in *Brnovich v. DNC*, creating judge-made, more difficult standards for plaintiffs in voting right lawsuits. Many Americans fear that this attack on voting rights is part of a coordinated assault on our fundamental rights and institutions, as Government officials, including a former President of the United States, try to overturn an election and sow doubt about its integrity.

We can restore confidence in our democracy by ensuring that every eligible American can vote without fear of disenfranchisement. Congress can do that just by passing the John R. Lewis Voting Rights Advancement Act, which would restore the VRA. Some have suggested we don't need this law, pointing to record-breaking voter turnout in the 2020 election. But take a close look, and if you do, you'll see the racial turnout gap is actually growing in this country, fueled by these voter suppression efforts.

In 2012, the year before *Shelby County*, the turnout rate for Black voters was higher than the rate for white voters in seven of the eight Southern States subject to Section 5 of the VRA. Eight years later, after the end of preclearance, the turnout gap has returned. Black voter turnout has fallen dramatically compared to white voter turnout in these States. Since the *Shelby County* decision, States have passed 94 restrictive voting laws, including discriminatory laws that the Department of Justice had previously rejected under preclearance review.

This includes laws that limit the use of mail ballot drop boxes, impose strict ID requirements, cut hours for early voting, and purge voters from registration rolls based on inaccurate databases. Voters in 27 States will face new restrictions on their right to vote in the Presidential election. And without the full force of the Voting Rights Act, their rights are at risk during one of the most critical elections of our lifetime. We must pass the John R. Lewis Voting Rights Advancement Act to protect what he called "the most powerful nonviolent tool or instrument we have in a democratic society."

Senator Graham is unable to be here at this moment because he's attending the Judicial Conference across the street. Oh.

Senator GRAHAM. Hey.

Chair DURBIN. On cue, he arrives. So, let me recognize Senator Graham.

**STATEMENT OF HON. LINDSEY O. GRAHAM,
A U.S. SENATOR FROM THE STATE OF SOUTH CAROLINA**

Senator GRAHAM. Thank you, Mr. Chairman. I was over at the Judicial Conference speaking to our judges. So, the Committee is taking on reforming the way we vote. A lot of people on our side

think the voting system needs to be looked at when it comes to mail-in ballots. There are accusations being made that people can't vote, in States that have voter IDs, fairly. I don't believe that for 1 minute. This bill is an effort, I think, to rewrite Federal law in a fashion that would make it harder for States to implement voter verification, that we're trying to solve a problem that I think doesn't exist. I think most Americans participated at the highest level in history in the last election. We had more people vote than anytime ever, anywhere.

And you're right about voting. It is a cherished right that needs to be protected, but I don't see this as an effort to protect voting as much as it is to create a situation where States cannot, in a reasonable way, validate who's voting. The only thing worse than being denied voting, or at least equal to it, is somebody not eligible voting. And a lot of concerns about that.

So, just think about how many times you have to show an ID to do anything in America of consequence. So, my State and other States have passed voter ID laws. They're designed to make sure the integrity of the ballot box, not to disenfranchise anybody. In South Carolina, we had record participation in the last Presidential election. 2022 was robust. So, you won't find much support for the John Lewis Voting Rights Act on this side of the aisle.

Lot of admiration for John Lewis. He took a beating for making America better. So, we admire the name John Lewis and his heroic efforts during the 1960's to make America a better place, but I think virtually all of us, if not all of us, will see this as an attempt to rewrite Supreme Court decisions that were long overdue. My State has been under scrutiny for a very long time, and I am proud of the way we vote in South Carolina. We've come a very, very long way, and I think the results of our system and other States that have been under scrutiny have borne fruit, and the Supreme Court recognized that.

This is something the left doesn't like but is real. People can vote in America, fairly, and the idea of changing the Supreme Court decision is not about expanding voting. It's about curtailing efforts at the States to protect the ballot box. We will be against that.

Chair DURBIN. Before we turn to our witnesses, let me lay out the mechanics for today's hearing. Begin with a Member panel. Each Member has 5 minutes in an opening statement. Then switch to our second panel. Once again, 5-minute opening statements from each witness and a round of 5-minute questions from each Senator.

First, we begin with a statement from Senator Warnock, our colleague from Georgia, who has been an exceptional partner in introducing this legislation and has firsthand knowledge of voting laws at a State level and the impact they have on the actual election. Senator Warnock, you may proceed.

**STATEMENT OF HON. REVEREND RAPHAEL WARNOCK,
A U.S. SENATOR FROM THE STATE OF GEORGIA**

Senator WARNOCK. Thank you so very much, Chair Durbin and Ranking Member Graham, for inviting me here today. Across the country, the right to vote is under assault, and we must urgently pass voting rights legislation. I had the honor of serving as John Lewis's pastor. I presided over his funeral. But while I was his pas-

tor, I'm very clear that he was the mentor. And 2 weeks ago, I was deeply honored to introduce, with Chair Durbin, the John Lewis Voting Rights Advancement Act, legislation named in his honor to protect the right to vote for all Americans.

As the first Black Senator from Georgia, let me be very clear today. I would not be here without the Voting Rights Act of 1965 and its protections that enabled millions of Americans to have their voices heard in our democracy. But a series of Supreme Court decisions have gutted preclearance, a very important and powerful tool, and other provisions of the Voting Rights Act, enabling State lawmakers to roll back voting rights across our country.

I have seen the results firsthand in my State of Georgia. I don't need anybody to tell me about it. I've seen it. I've experienced it. After the 2020 elections, partisan actors in the State legislature passed a sweeping voter registration law, S.B. 202, that made voting harder for thousands of Georgians. And let me offer just a few examples. I wish I had more time.

After a record number of Georgians voted by mail, S.B. 202 made it harder for voters to request a mail-in ballot, while also reducing the number of drop boxes to return them. I wonder why. It shortened the time for runoff elections, leading to fewer early voting days, which led to lines that were hours long. I wonder why. It allowed a single person—think about this: a single individual—to make unlimited, mass challenges to voters' registration. Who's changing the law in that case? Who's changing the way we practiced our laws and the way we've allowed people to vote? A single individual to make unlimited mass challenges to voters' registration—and in 2022, this allowed just 6 right-wing activists to challenge the registrations of 89,000 Georgia voters: 100,000 voter challenges, 89,000 of them put forward by 6 right-wing activists.

And they have not stopped there. This year, a member of the State Election Board proposed ending no-excuse vote by mail, and a Georgia State Senate Committee voted to end automatic voter registration. I find it very interesting that the folks who say we need to make sure that there is integrity in our system—and I believe in that—and who put forward voter ID, which I support—I think often it's too restrictive, but it's interesting that the folks who say we've got to make sure that we verify people's voter ID would show up as opposed to voter motor laws, where you're using the bureaucracy and the regimen of getting a driver's license as a basis for getting registered to vote. Why would you get rid of that, if you believe in voter identification?

Sadly, Georgia is not unique. Last year, lawmakers introduced over 350 restrictive voting bills in 47 States. Many of these efforts are only possible because of the gutting of the Voting Rights Act. Now, some argue that high voter turnout means there is no voter suppression. So, let's talk about that. Let me be very clear. People across the country turned out in the rain and the cold and during hours-long lines, and not in every neighborhood, some neighborhoods. We're entitled to our own opinions, not our own facts. It's a fact that people of color, Black people, stay in lines longer just to vote. But these people stayed in line not because there's no voter suppression. They just refused to have their voices silenced.

I saw this firsthand in 2022, when Georgia State Officials tried to eliminate Saturday voting. They argued it wasn't allowed, in part because of a State holiday originally celebrating Robert E. Lee. And so I sued the State, and I won. They appealed, and I won again. We went all the way to the Georgia Supreme Court, where I won again. You would think that State Election Officials in Georgia would've been busy getting ready for the runoff election. Instead, they were spending our resources appealing the decision for folks to be able to vote on Saturday. I wonder why.

Seventy thousand people voted that day, and if you only knew that number, you might think that voting is easy, as some of my colleagues want to suggest. What you would miss is how hard we had to fight for them to be able to show up. The fact that people voted does not mean all people had an equal opportunity to vote, and a recent analysis by the Brennan Center shows that, since the 2013 *Shelby* decision, the turnout gap between white and nonwhite Americans has grown. We're all entitled to our own opinion. These are the facts. The racial gap has widened.

And it has especially widened in the places once covered by the Voting Rights Act's preclearance requirements. In 1965 and over the decades since, Congress has repeatedly reaffirmed the Voting Rights Act on a bipartisan basis. In 2006, this very body reauthorized the Voting Rights Act by a vote of 98-to-0. President George W. Bush, a Republican, was President. Before us is the opportunity to advance that legacy by passing the John Lewis Voting Rights Advancement Act and the Freedom to Vote Act.

The Freedom to Vote Act, which many of my colleagues here—including Senators Klobuchar and Padilla—and I introduced, would create national minimum standards for voting, end partisan gerrymandering, and root out the influence of dark money. Meanwhile, the John Lewis Voting Rights Advancement Act would restore the protections of the Voting Rights Act, including preclearance, to prevent future attacks on our right to vote. This should not be a partisan issue. The right to vote is preservative of all other rights. It preserves the framework in which all debate takes place. These bills would ensure that every eligible American has a voice in the direction of our country, from working families who need to vote after hours to rural voters who need to vote by mail.

In conclusion—and nobody believes a pastor when he says, in conclusion—let me say that it's true all of us celebrate John Lewis. A couple weeks ago, many folks made that annual pilgrimage to Selma. You cannot remember John Lewis and dismember his legacy at the same time. If you celebrate John Lewis, support what he supported. He supported the legislation in front of us. The Freedom to Vote Act was written by John Lewis. If you celebrate John Lewis, pass the John Lewis Voting Rights Advancement Act.

Chair DURBIN. Thank you, Senator. Senator Graham, you may introduce your witness.

Senator GRAHAM. Thank you, Mr. Chairman. We're honored to be joined today by Representative Wesley Hunt. He serves as U.S. Representative for Texas, 38th Congressional District. He was first elected in 2023 and serves on the House Judiciary Committee as well as the House Subcommittee on the Constitution and Limited Government. He received his bachelor of science from the United

States Military Academy at West Point. After serving 8 years in the United States Army, attended Cornell University where he obtained a master's of business administration and public administration and industrial labor relations. You're a busy guy. We're honored to have you. Thank you very much.

Representative HUNT. Thank you, sir.

Chair DURBIN. Congressman Hunt, proceed.

**STATEMENT OF HON. WESLEY HUNT,
A U.S. REPRESENTATIVE (TX-38), WASHINGTON, DC.**

Representative HUNT. Thank you, Chairman Durbin and Ranking Member Graham, for having me here today to speak about voting rights in America, the country that I love dearly. More importantly, I'm here to talk about the left's soft bigotry of low expectations, because it's the Democratic party, not the Republican party, that thinks so little of Black America, of people of color, that they make the case that being Black in America means we can't obtain a Government ID to vote. And that's not only a ridiculous assertion, it's demeaning and it's insulting.

When it comes down to it, many of my colleagues on the left like to pretend that we're still living in the 1950's. Well, we're not. I've got some good news for you. It's 2024, and I know what year it is because I've been Black for just over 40 years, and I'm also the son of a retired lieutenant colonel who grew up in the segregated South. You see, my parents grew up in the Jim Crow South in the 1950's and 1960's, in New Orleans, Louisiana. Their next generation, my parents, had three kids: my sister, brother, and I. All went to West Point. All three of us. We all served our country in combat. And I sit before you today, as a sitting United States Congressman, in a district in a suburb of Houston, Texas, in a white-majority district that President Trump would have won by 25 points and I won by almost 30 points. And that doesn't happen unless we've made some incredible progress in this great Nation.

Now, my colleagues on the left like to say that commonsense voting laws, including requiring a Government-issued ID, are racist and discriminatory and burdensome. Do you know what my father had, back in the 40's and 50's, before it was even cool? A Government-issued ID. And in his footsteps, I too have multiple Government-issued IDs. And while that might be shocking to many people in this country, you may ask, how does that happen? It's very simple. It's personal responsibility for all Americans in this country, regardless of what you look like.

Sitting with me today is my global entry card; my military ID card; my Texas driver's license; my Texas license to carry, because that's how we roll in Texas; my congressional card; and, of course, the good old-fashioned American passport. What sorcery is this? What am I, the Black Houdini? How was I able to pull off the impossible and attain not one, not two, not three, but six government-issued IDs? Personal responsibility in this country.

I fought for this country as an Apache helicopter pilot, to protect free and fair elections, and having a Government-issued ID isn't racist. It's American. You need to have an ID to drive a car, to check in to the airport, open a bank account. You need an ID for basically everything, to be a responsible adult in this country, ex-

cept for voting, apparently, according to the left. Black America does not need well-meaning liberals putting their arms around us and telling us how we should go to the polls. In fact, if you look at recent headlines and polls, you will find that Black men, specifically, in this country are more fired up than ever to participate in the next Presidential election. And I think I know why, and I'm really looking forward to these results.

For the record, in the 2022 midterms in Georgia, it proved that election integrity and ballot accessibility can be achieved hand in hand. After the 2020 election, Georgia passed a voter election integrity law, and subsequently the Department of Justice filed a lawsuit against the State of Georgia, alleging that the Georgia law is discriminatory and aims to restrict citizens from voting. President Biden even called this law "Jim Crow 2.0." Really. In my humble opinion, referencing Jim Crow for commonsense election integrity laws is offensive to those who actually experienced Jim Crow, like my parents and their parents before them. In fact, the law wasn't discriminatory at all, because in the 2022 midterms, Georgia voters shattered voter turnout records across the State. And despite that record-breaking turnout in Georgia, the DOJ lawsuit is still pending. I suspect that it's because that record-breaking turnout resulted in a Republican Governor being elected in Georgia. But I digress.

I'm going to say the quiet part out loud, which I tend to do. I have a lot of respect for John Lewis, but the John Lewis Voting Rights Advancement Act is not about protecting voting rights. It's about solidifying Democrat power nationally. It's about Federal control over State and local elections, which, by the way, is unconstitutional. It's about diminishing the security of our elections. And voter integrity laws aren't discriminatory. They are required for a functioning constitutional republic.

I'm going to tell you today, I categorically reject the soft bigotry of low expectations. Black Americans and people of color are proud. We expect more of ourselves. That's what Black excellence really means to me. And above all else, we don't need a new solution to a problem that doesn't exist. Let me be clear. Making it to the polls to vote in person with an ID in this country today is a very low bar, extremely low bar. We can do it. White people can do it. Black people can do it. Americans can do it. And we should all want that, for free and fair elections.

If you want to be on the right side of history, you should reject the Democrats' party's attempt to wind the clock back 70 years, because I'm sitting right here in front of you, and I'm here to tell you, we've come a long way. Let's continue this progress. Thank you for your time. Thank you, Chairman. Thank you, sir, for having me.

Chair DURBIN. Thank you, Representative. We'll now switch to our second panel. If the witnesses for the second panel will start to come forward, we'll start shortly. I thank everyone for their patience. Let me introduce the majority witnesses.

First, we welcome Damon Hewitt, the president, executive director of the Lawyers' Committee for Civil Rights Under Law. Mr. Hewitt has more than 20 years of civil rights litigation and policy experience, including prior leadership roles in the nonprofit, phil-

anthropic, and public sectors, and he's led the Lawyers' Committee since 2021.

Also joined by Lydia Camarillo—I hope I pronounced that correctly—who serves as president of the Southwest Voter Registration Education Project, a nonprofit organization helping millions of Latino voters register to vote. Ms. Camarillo previously served as national leadership director for the Mexican American Legal Defense and Educational Fund, MALDEF.

Our final majority witness is Sophia Lin Lakin, director of the Voting Rights Project at the American Civil Liberties Union, where she leads a team of attorneys working to advance and protect access to the ballot. She has worked on many successful challenges to discriminatory voting laws across the country.

Chair DURBIN. Ranking Member Graham, would you please introduce your two minority witnesses?

Senator GRAHAM. Yes. Thank you, Mr. Chairman. Our first witness is Hans von Spakovsky. Is that close?

Mr. von SPAKOVSKY. Thank you, Mr. Chairman. The claim that there—

Senator GRAHAM. Oh, wait. Wait a minute. I just—did I get your name right?

Mr. von SPAKOVSKY. Yes.

Senator GRAHAM. Okay. Good.

Mr. von SPAKOVSKY. We're good.

Senator GRAHAM. He's the manager of the Election Law Reform Initiative and Senior Legal Fellow at The Heritage Foundation. He was appointed by President Trump to the Presidential Advisory Commission on Election Integrity in 2017. He also has prior experience as a member of the Federal Election Commission, an attorney with the Civil Rights Division at the Department of Justice. He's a graduate of Vanderbilt University school of law and received a BS from MIT in 1981.

Maureen Riordan. Did I get that right?

Ms. RIORDAN. Yes, you did.

Senator GRAHAM. Thank you. Second witness. She is a litigation counsel at the Public Interest Legal Foundation, over 20 years of experience of litigation with the Voting Rights Act in the Department of Justice. She holds her law degree from St. Mary's law school and received her bachelor of science degree from Seton Hall. Thank you.

Chair DURBIN. Thank you. If the witnesses would please rise to take an oath.

[Witnesses are sworn in.]

Chair DURBIN. Let the record reflect that the witnesses answered in the affirmative. And we'll start with Mr. Hewitt. Five minutes.

**STATEMENT OF DAMON T. HEWITT,
PRESIDENT AND EXECUTIVE DIRECTOR, THE LAWYERS'
COMMITTEE FOR CIVIL RIGHTS UNDER LAW,
MONTGOMERY, MARYLAND**

Mr. HEWITT. Good morning, Chair Durbin, Ranking Member Graham, and Members of the Senate Judiciary Committee. My name is Damon Hewitt, president and executive director of the

Lawyers' Committee for Civil Rights Under Law. Thank you for the opportunity to testify this morning about the important need to protect voting rights by restoring the Voting Rights Act.

The Lawyers' Committee uses legal advocacy to achieve and advance racial justice, fighting inside and outside of the courts to ensure that Black people, people of color, and all Americans have the voice, the opportunity, and the power to make the promises of democracy that are on paper real in our daily experience. The Lawyers' Committee will litigate cases on behalf of voters who are traditionally, historically, and today disenfranchised; voters who face the fiercest of voter suppression tactics. The Lawyers' Committee also coconvenes the Election Protection Coalition, the Nation's largest, oldest nonpartisan voter protection coalition, comprised of nearly 400 organizations.

Our work gives us a front-row seat to modern-day voter suppression. We see up close the barriers that voters face, and we understand the challenges that litigators and advocates face in defending their right to vote, now, over 10 years since the Supreme Court's decision in *Shelby County v. Holder*. As Chairman Durbin noted earlier, the late Congressman John Lewis said that voting is the most powerful nonviolent tool we have to create a more perfect Union. And as President Lyndon Baines Johnson noted when urging Congress to pass the Voting Rights Act, he said there can and should be no argument. Every American citizen must have an equal right to vote.

Senators, no eligible person of voting age, especially historically disenfranchised Black voters, should be confronted with barriers designed to make it more difficult for them to register and more difficult to cast a ballot. That's what this is all about. Nor should we be limited to participating in an empty ritual in which the ballots we cast are rejected or rendered meaningless by discriminatory procedures or redistricting practices, sometimes hiding under the guise of partisanship. Moreover, we should not be subjected to court decisions that systematically neuter the reach of longstanding civil rights laws. Yet, these things are happening with greater frequency, due to the weakening of the Voting Rights Act. The floodgates of voter suppression have been wide opened, and the health of our democracy has deteriorated with every passing election cycle.

Over a decade since *Shelby County*, we know that the preclearance provision—which was so important, which allowed DOJ or a Federal court to stop bad things from happening before they happened, the prophylactic power—is what we're missing here. Just as Ruth Bader Ginsburg's famous dissent in *Shelby County* put it best, and it becomes more prophetic with each passing year—she said, “throwing out preclearance when it has worked and it's continuing to work to stop discriminatory changes is like throwing away your umbrella in a rainstorm because you're not getting wet.”

Senators, voters of color are feeling the storm. Our country has gone from being protected under the umbrella of Section 5 to being drenched by wave after wave of voter suppression actions and tactics and laws at the State level. We're battered by headwinds from cases like *Shelby County* and *Brnovich v. DNC* and other cases that systematically cut back the scope and legal protections of the VRA.

We are weathering the barrage of all of these State laws, all made possible by the gutting of Section 5, the heart of the Voting Rights Act.

Our litigators face new challenges in defending the right to vote. Our election protection staff and our partners on the ground nationwide are working valiantly to help voters make it through the storm, but Congress must do its part. In the *Shelby County* case, the Supreme Court acknowledged that racial discrimination in voting continues to exist. Racial discrimination in voting continues to exist. That's an invitation for the Congress to act, and Congress can and must act by passing legislation like the John R. Lewis Voting Rights Advancement Act in its strongest possible form.

In the decade since *Shelby County*, Congress as a whole has been derelict in its duty to restore the law. This is not rewriting the law. This is restoring the law to its original intent and force. And, ironically, Congress and this body, on a bipartisan basis, has repeatedly supported, reauthorized, and even strengthened the Voting Rights Act. So, what's different now? As this body considers new legislation to protect voting rights, I urge you to think back to the reasons why the VRA was adopted and passed in the first place.

States with large numbers of people of color continuously passed laws to make it harder to vote. They targeted Black voters with surgical precision, coming up with ingenious devices to make it harder to vote: a maze of trap doors, even if the door itself wasn't physically barred. History is now repeating itself, unfortunately, once again. As the proportion of Black voters increases, we're seeing more of these ingenious devices, these devious methods, to prevent people from voting or just to make it harder to vote. The whole idea is to have a chilling effect on voter engagement, voter participation, voter turnout—all for the means of political power. When Congress passed the VRA in 1965, it knew it had a moral imperative. I urge this body to find that moral clarity once again. America deserves better. I welcome your questions.

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

Chair DURBIN. Thanks, Mr. Hewitt. Ms. Riordan.

**STATEMENT OF MAUREEN RIORDAN, LITIGATION COUNSEL,
PUBLIC INTEREST LEGAL FOUNDATION,
ALEXANDRIA, VIRGINIA**

Ms. RIORDAN. Good morning, Mr. Chairman, Ranking Members, and Members of the Committee. Thank you for your invitation to speak to you today. I'm an attorney with the Public Interest Legal Foundation, a nonprofit law firm that is geared toward promoting election integrity and preserving the constitutional right of States to administer their own elections.

From August 2000, until the Supreme Court decision in *Shelby County v. Holder*, my sole responsibility was reviewing changes in voting that were subject to preclearance. If passed, the proposed act will once again give tremendous power to partisan bureaucrats within the Voting Section over the election procedures of every State and locality in the country.

I began my employment in the Voting Section just prior to the Presidential election in the year 2000, and during the Florida re-

count, I personally observed attorneys within the Section faxing and receiving faxes from the DNC in the Gore campaign in Florida. The DOJ Inspector General report entitled, “A Review of the Operations of the Voting Section of the Civil Rights Division,” is attached to my testimony, and it provides instance after instance of bad behavior by the Section, often racially motivated.

For example, when the Voting Section brought a case against an African American in Noxubee County, Mississippi, the Section attorneys didn’t agree with the prosecution. They engaged in horrific behavior and targeted a Black paralegal, telling him he was not Black enough because he had the gall to work on that matter. Abuses by the Section have also been really expensive to the taxpayer. The Office of Legislative Affairs said that between 1993 and 2000, the Voting Section has been sanctioned well over \$2 billion. For an example, *Lynn Johnson v. Miller*—the Section was sanctioned almost \$600,000 for collusive conduct with attorneys from the Voting Section and attorneys from the ACLU in review of the Georgia State redistricting plan.

In Kinston, North Carolina, they objected to a decision by a majority-Black city council to dump partisan races. The logic of the objection was that Black voters in Kinston would not know who to vote for if the Democratic title was not next to their name. In North—South Carolina, they objected to the annexation of two people, two white people. They wanted to get into the town for sewer and water. They objected because the town couldn’t show that they had annexed any Black individuals, despite the fact that none had applied.

I’m also aware of the intentional targeting of the continued viability of the Senate—State Senator in South Carolina’s district in the review of the State’s statewide redistricting plan. Section 5 was a temporary provision, and the reason for it no longer exists. The Supreme Court in *Shelby* not only determined that the formula for Section 5 is unconstitutional, but it also questioned the need for it today. It made clear that only rampant discrimination on a wide scale would justify any formula for Section 5. The Court acknowledged the onerous burden that preclearance process places on a jurisdiction, and it will doom the constitutionality of this act’s addition of a retrogression claim under Section 2.

Attempts by some to use the retrogression standard disguised as a claim under Section 2 has already been rejected by the Supreme Court. And, furthermore, retrogression is not unconstitutional. Even the Department of Justice recognizes what’s known as unavoidable retrogression, and this happens when an area of Black population moves or there’s been an influx of white population or the minority population has become so infused within the county that it is no longer able to either maintain a minority district or create one. Those types of retrogression are not actionable under Section 5, and they certainly will not be actionable under Section 2.

The Department already has a history of weaponizing the retrogression standard. When they disagree with a voting change, they will use miniscule statistical differences to claim retrogression. The Department’s objections to South Carolina’s voter ID law, based

upon a 1.6 percent difference in white voters' and Black voters' possession of an ID, is a prime example of this type of nonsense.

The States previously covered by Section 5 will also be targeted again by your formula, which reaches back 25 years. Twenty-five years ago, there were only certain States that were subject to the Section 5 preclearance standard. Those States had to submit every single voting change to the Department of Justice or the Federal court. Therefore, they're the only ones that will have a history of violations. Simply put, the act and the formula will not survive judicial scrutiny. Thank you.

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

Chair DURBIN. Thank you, Ms. Riordan. Ms. Camarillo. Did I pronounce that correctly?

Ms. CAMARILLO. Perfect.

Chair DURBIN. Please proceed.

Ms. CAMARILLO. Thank you. Good morning, Chairman——

Chair DURBIN. You have to——

Ms. CAMARILLO [continuing]. Durbin——

Chair DURBIN [continuing]. Punch the button on the microphone.

**STATEMENT OF LYDIA CAMARILLO,
PRESIDENT, SOUTHWEST VOTER REGISTRATION
EDUCATION PROJECT, SAN ANTONIO, TEXAS**

Ms. CAMARILLO. Good morning, Chairman Durbin, Ranking Member Graham, and the U.S. Senate Judiciary Committee. Thank you for this opportunity and the honor to testify before the U.S. Senate Judiciary Committee. I come before you in strong support of the John Lewis Voting Rights Advancement Act, and I thank you for this important legislation. I am president of Southwest Voter Registration Education Project. I have had the privilege of serving in leadership positions at Southwest Voter for over 25 years. I have served as a chair of the Texas Latino Redistricting Task Force since 2010.

Southwest Voter is a nonpartisan, nonprofit organization founded in 1974 in San Antonio, Texas by the late William C. Velasquez. Since opening its doors 50 years ago, Southwest Voter has registered 3.4 million Latinos. No other Latino or non-Latino group has registered more Latino voters than Southwest Voter. Southwest Voter has trained over 150,000 Latino leaders.

As William C. Velasquez began working in Latino communities across the southwest, he sought technical assistance from John Lewis while he worked for the Voter Education Project. William Velasquez gained the knowledge and skills he needed to register Latino voters from this legendary icon, a hero to all of us. In my role at Southwest Voter, I had witnessed States' enactments of laws to suppress and dilute votes, particularly of Latino voters and of other racial and ethnic communities. I have witnessed the systematic damaging impact of such legislation.

Among other factors, repair of efforts to suppress the vote is costly. In Georgia, in 2020, Southwest Voter contacted over 200,000 Latino, Black, and other ethnic voters whose ballots had to be cured to ensure their votes would be counted. In 2021, Southwest Voter reached out to over 50,000 Latino voters with live contacts

to ensure that they could exercise the right to vote in the runoff elections for the U.S. Senate.

My perspective is also personal. Over several election cycles, when I vote in my precinct, located in a majority-white neighborhood, I am told that I am not registered to vote. I have lived in my home since 1996. This is consistent with my observation that voter suppression efforts often target Latino communities based on the assumption that if the communities included Spanish speakers, they consist primarily of undocumented immigrants. I have seen dozens of voter suppression laws that target relatively recent Latino immigrants who are U.S. citizens as well as U.S. citizens whose families have lived here for generations—indeed, since 1948. These are 12-generation Americans.

My perspective is that—that many of these laws represent serious deprivation of the right to vote and has confirmed by Southwest Voter's history of prevailing lawsuits. Southwest Voter has won 210 vindicating the right, loses—I'm sorry—vindicating the right of Latino voters in multiple States. For example, in 2019, Texas was blocked, by an SVREP lawsuit, from purging 100,000 Latino voters from the voting rolls based on outdated driver's license or State identification information. These voters received their driver's license before they naturalized but registered to vote after naturalization and voted lawfully.

Efforts to make it difficult, if not impossible, for Latino voters to exercise their voting rights have been dauntingly successful. The Latino community makes up 40.2 percent of the Texas population, while the non-Latino white community comprises 39.8 of the Texas population. Yet there are 27 non-Latino, white-majority districts and only 7 Latino-majority congressional districts in Texas.

The John Lewis Voting Rights Advancement Act provides an essential legal framework to stop discriminatory changes in election law before they can be implemented. The act will help vindicate the right to vote in marginalized communities, particularly in States with large Latino populations. We urge the reinstatement of Section 4(b) of the Voting Rights Act and strengthen the VRA to help save America's democracy by protecting the right to vote for all citizens. In the past, Latino voters were blocked from voting by the poll tax. When the courts ruled this pattern of discrimination unconstitutional, the laws continue to be enacted to suppress and dilute the political power of the Latino electorate and others: literacy tests, English requirements, and long residence requirements, to name a few.

Over the last year, 19 States have enacted 34 laws to restrict access to voting. This includes obstacles to vote by mail; new voter ID laws; proof of citizenship; and limitation to voter assistance, especially for those with limited English or Spanish-only speaking, visual impairment, and voters who need assistance when voting due to disabilities or age. For example, Texas counties eliminated early voting sites and reduced days and hours of operation, particularly voting in Latino communities.

I urge the support of this bill, the John Lewis bill. We need it. Southwest Voter stands ready to work with the U.S. Senate Judiciary Committee to make sure that we move forward to ensure that we protect the right of every voter to vote. Thank you.

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

Chair DURBIN. Thanks for your testimony. Next is Mr. Hans von Spakovsky.

**STATEMENT OF HANS VON SPAKOVSKY, MANAGER OF THE
ELECTION LAW REFORM INITIATIVE AND SENIOR LEGAL
FELLOW, THE HERITAGE FOUNDATION, WASHINGTON, DC**

Mr. von SPAKOVSKY. Thank you, Mr. Chairman. The claim that there is a wave of voter suppression going on across the country that requires expansion of the Voting Rights Act is simply false. Efforts to enhance the integrity of the elections through reform such as voter ID and improvements to the accuracy of voter registration lists are not voter suppression. On voter ID, for example, the data is very clear that such a requirement does not prevent eligible individuals from voting, and yet the proposed legislation would treat it as a suspect discrimination practice.

A 2019 survey by the National Bureau of Economic Research of 10 years of turnout data from all 50 States found that State voter ID laws “have no negative effect on registration or turnout overall or for any group defined by race, gender, age, or party affiliation.” Voters understand this. Polling shows they overwhelmingly support commonsense voter ID requirements, regardless of their race and regardless of their party affiliation. The Census Bureau reports that the turnout in the 2020 election was 66.8 percent, just short of the record turnout of 67.7 percent of voting-age citizens for the 1992 election.

The census survey shows that there was higher turnout among all races in 2020 when compared to 2016, and the Census Bureau also says that voter registration in 2020 was higher than the 2000, 2004, 2008, 2012, and 2016 elections, when supposedly all this suppression was going on to keep people from registering. A survey after the 2022 election in Georgia shows that critics of the State’s 2021 election reforms were wrong. The University of Georgia found that precisely zero percent of Black voters said they had a poor experience voting in 2022, and according to the Pew Research Center, Georgians cast more votes in 2022 than in any other midterm election in its history, with Black voters making up 48 percent of the increase since 2000.

In fact, in the 2020 election, when we were dealing with a pandemic, we had, according to the Census Bureau, the highest voter turnout of the 21st Century. Yet S. 4 would actually expand preclearance to reach every State in the country with a new practice-based preclearance requirement. As the Supreme Court has made clear, any requirement that States obtain Federal preapproval of election changes could be imposed only if Congress found blatantly discriminatory evasions of Federal court decrees, lack of minority officeholding, voting tests and devices, or voting discrimination on a pervasive scale. Those conditions are nowhere to be found in 2024.

The provisions of S. 4 that overturn the Supreme Court’s guidance in the *Brnovich* decision on the application of Section 2 are also ill advised and interfere with States’ constitutional authority over the administration of elections. S. 4 eliminates rational and

fundamental factors that are essential to evaluating the totality of the circumstances in any Section 2 lawsuit. It also specifically amends Section 2 to include a coalition of different racial-or language-minority groups. This would change the Voting Rights Act from a statute intended to prevent racial discrimination to a partisan tool to protect political alliances and coalitions. That would raise serious constitutional questions over the validity of Section 2.

Existing Federal laws are more than sufficient to protect voters and ensure that they can easily and securely practice their franchise without discrimination, fear, or intimidation. Americans today have an easier time registering and voting securely than at any time in our nation's history, and election officials and voters are already protected from intimidation and coercion by comprehensive Federal and State laws. There is simply no need to implement a new, vastly expanded Section 5, and the changes proposed in Section 2 would change it from a provision to prevent racial discrimination in voting to a tool for political manipulation of redistricting and the voting process, intended to guarantee the success of one specific political party.

It is not 1965, and there's no longer any justification for giving the Federal Government the ability to veto election laws that citizens and their elected representatives choose to implement in their respective States. There's also no justification for eliminating the ability of States to defend themselves from meritless lawsuits filed under Section 2 for nondiscriminatory widespread traditional election practices that have been developed to ensure both access for voters and safe, fair, effective, and secure administration of elections. Thank you.

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

Chair DURBIN. Thank you, sir. Ms. Lakin.

**STATEMENT OF SOPHIA LIN LAKIN, DIRECTOR,
VOTING RIGHTS PROJECT, AMERICAN CIVIL
LIBERTIES UNION FOUNDATION, NEW YORK, NEW YORK**

Ms. LAKIN. Chair Durbin, Ranking Member Graham, and Members of the Committee, thank you for the opportunity to testify today. I'm Sophia Lakin, the director of the ACLU's Voting Rights Project. Last week, on the 59th anniversary of Bloody Sunday, we honored John Lewis and the civil rights activists in Selma, Alabama who risked or gave their lives to secure the right to vote. Their courage, sacrifice, and determination led Congress to enact the Voting Rights Act, or the VRA, one of the nation's most successful pieces of civil rights legislation. But nearly 11 years ago, in *Shelby County v. Holder*, the Supreme Court gutted the VRA's most powerful provision, the preclearance system that stopped discriminatory practices before they took effect in places with the worst records of discrimination.

This decision unleashed a flood of discriminatory voting laws across the country. Nearly 100 restrictive voting laws have been enacted since *Shelby*, and just this past year, at least 14 States have enacted 17 restrictive voting measures. Over the past 2 years, courts have struck down racially discriminatory maps in Alabama, Georgia, Louisiana, South Carolina, and elsewhere.

The ACLU and our many partners continue to utilize case-by-case litigation to protect voting rights. For its part, the ACLU has filed or intervened in nearly 100 cases to protect the rights of voters since *Shelby*. But this approach, including using what remains of the VRA, particularly Section 2—a nationwide ban on discriminatory voting practices—is woefully inadequate to address the enormity of the problem at hand.

For one, unlike preclearance, voters can bring Section 2 cases only after a jurisdiction passes a discriminatory law. It also requires vast amounts of resources and time. As we know firsthand, this too often allows States to keep discriminatory rules in place during elections against the backdrop of slow court processes, irrevocably disenfranchising the very voters the VRA was designed to protect. The ACLU's 10 active Section 2 cases have been pending, on average, for 25 months, more than a 2-year Federal election cycle.

I want to highlight one potent and very recent example undeniably showing that racial discrimination in voting is very much alive and well today. The only appropriate response is to restore and strengthen the VRA, including preclearance. In 2021, along with the Legal Defense Fund and partners, we challenged Alabama's discriminatory congressional map within days of its enactment and won an injunction blocking it 9 months before the 2022 midterms. But even though the three-judge trial court held that the case was not particularly close, the Supreme Court put that ruling on hold during appeal.

Ultimately, in its landmark ruling in *Allen v. Milligan*, less than a year ago, the Supreme Court agreed that the map discriminated against Black voters, violating Section 2—that's 11 years after a Supreme Court majority wrongly declared that things have "changed dramatically in the south"—in Alabama, the very State from which the *Shelby* decision arose. But it took 16 months to achieve this win, and in the meantime, the 2022 congressional elections took place under the racially discriminatory map.

It is impossible to remedy the gross injustice Black Alabama voters faced, having their voting strength illegally stifled, despite every effort under what's left of the VRA. This is an egregious affront to the promise of democracy John Lewis and other civil rights giants marched and bled for. And even after the Supreme Court finally agreed that Alabama's map was racially discriminatory, the State drew a new map that defied the judiciary and continued to discriminate against Black Alabamians, trying to yet again appeal to the Supreme Court.

And the fight in Alabama continues as I speak. While a new map is in place for the 2024 elections, Alabama persists in defending its discriminatory map for future elections. This is one example among many, and we cannot stand by any longer while Black, Latino, Asian-American, Native, disabled, and other marginalized voters continue to be silenced. The promise of a fully inclusive, multiracial democracy hangs in the balance. Our current tools in this fight, while important, are simply not enough to combat enduring racial discrimination in voting. Congress must meet this moment by passing the John R. Lewis Voting Rights Advancement Act. Thank you, and I look forward to your questions.

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

Chair DURBIN. Thank you, Ms. Lakin. We'll go the first round, and Members each have 5 minutes of questions. Let me say, at the outset, thank you for being here and being part of this historic congressional hearing. But I do want to say, before we congratulate ourselves too much about 60 percent of the American population voting, we ought to take a look at some European countries, which have much higher percentages. For us to be satisfied with 60 percent, I think, should be an embarrassment to us and not a source of great pride. We can and we should do better. Every eligible American should be voting. We should give them that opportunity, and that means making certain that the voting procedures are realistic.

The University of Maryland teamed up with the Brennan Center and did a survey that they recently released of 2,386 respondents nationwide. When it comes to the issue of voter ID, what they found, I think, is very eye opening. Congressman Hunt earlier brought in six or eight Government-issued IDs to demonstrate how easy it is to get a voter ID. They included, of course, the obvious driver's license but went on to include passports, global entry, and other things. If you're aware of those systems, you know that they're not free. You end up spending money to obtain that Government ID, and it's understandable that lower-income individuals are less likely to be in that position.

The Brennan study with the University of Maryland found some interesting things, as well, when it comes to the easiness of using the driver's license as a voter ID. Twenty-one million voting-age U.S. citizens do not have a current driver's license. Twenty-one million. Another 12 percent have a nonexpired license, but it does not have both a current name and a current address for that voter. Ninety-six percent of those with some discrepancy have a license without a current address. So, you move, and you don't change your driver's license—in many States, you can't use that as your ID to vote.

When you look at subsets affected by this, younger Americans—41 percent of those between 18 and 24—currently don't have a driver's license with a current name; young Black Americans, 47 percent neither current name or address; 30 percent no license at all, for young Black Americans. So, to say this is an easy thing is not realistic. And, of course, when they do the analysis, people with less education and lower annual incomes are more likely to lack a current driver's license. To say that this is somehow the bigotry of low expectations, I think, is insulting. These individuals, many of them, are just living difficult lives with a lot of demands. Ms. Lakin, have you run into this in your analysis of the use of voter ID?

Ms. LAKIN. Yes, Senator. Thank you for that question. Absolutely. And when it comes to voter ID, I would say the devil is in the details. While we all agree that elections should be safe and secure and free and fair and that voters should be verifying that identity, the truth of the matter is that in many instances there are voter IDs that are really difficult to comply with and that they

are adopted with discriminatory intent and with discriminatory impact.

And we have seen this, for example, in the North Carolina case that we litigated in 2013, which challenged a law that was adopted shortly after *Shelby County*. In that case, the State, following *Shelby County*, went ahead and changed the voter ID law that it was going to impose and, in doing so, dropped IDs that were disproportionately held by Black voters and left in the bill only those voter IDs that were disproportionately held by white voters. Ultimately, the fourth circuit ruled that the law targeted Black voters with almost surgical precision and struck down that law as unconstitutional.

Chair DURBIN. I think those were the exact words used by the Court in North Carolina. Is that correct?

Ms. LAKIN. That's correct, Your Honor—Senator.

[Laughter.]

Senator KLOBUCHAR. We call him His Honor all the time. It's fine.

Ms. LAKIN. I'm a litigator.

Chair DURBIN. Go straight to—

Ms. LAKIN. Hard habit to break.

Chair DURBIN. Mr. Hewitt, I guess they're telling us that we're living in the past, we seem to think this is still Jim Crow America, and things are much better off. And yet, since the *Shelby* decision, we've taken a closer look at the changes in State laws. And what do we find?

Mr. HEWITT. What we're finding is the same type of surgical precision or attempts proximate to that. You know, I know, as a native of New Orleans, in the great State of Louisiana, a State where, you know, since the Voting Rights Act was adopted, every redistricting plan for Louisiana in the House of Representatives was rejected by DOJ or a Federal court because it undermined Black voting strength—and that pattern would've continued, but for *Shelby County* and the gutting of the preclearance provision—we see the same patterns that we've been seeing for a long time.

And also, growing up in Louisiana, I know that in Black communities, certainly in my home State, people in Black communities tend to vote in person. That's how we did it. But during the pandemic, when there were new methods of voting, newly available or newly popularized—absentee or by mail or even, in Harris County, Texas, drive-through voting, which is in-person voting, but drive-through voting—what we saw is, as soon as Black voters started using those methods, all of a sudden they became a problem. All of sudden, there's some type of issue.

It's that kind of surgical precision that underlie our desire and, in fact, our action, to file intentional discrimination claims in cases like we did in Georgia, challenging S.B. 202, because if you're challenging the very means that are newly popular with Black voters, you must have a problem with those Black voters. And so these patterns are repeating themselves over and over again.

Chair DURBIN. Thank you very much. Senator Lee.

Senator LEE. Thank you, Mr. Chairman. Thanks to all of you for being here to testify on this important issue. I'd like to ask each of you a couple of very simple questions, in the interest of time, be-

cause we've got a lot to cover and little time to do it. I'm going to ask for a yes-or-no answer to each of these questions. What I'd like to do is start with Mr. Hewitt and then go to Ms. Riordan and so on and so forth. Again, answer with a yes or a no.

So, we'll start with you, Mr. Hewitt. Do you believe that only citizens of the United States should be able to vote in Federal elections?

Mr. HEWITT. We don't have a position about noncitizens voting in Federal elections. We believe that's what the current laws are, and so we are certainly fighting for everyone who's eligible under current laws to be able to vote.

Senator LEE. Ms. Riordan?

Ms. RIORDAN. I don't—do not believe they should be able to vote. Oh, sorry. I do not believe that noncitizens should be able to vote in Federal elections.

Senator LEE. Ms. Camarillo?

Ms. CAMARILLO. That's a decision of the State law, but I want to emphasize that—

Senator LEE. It's a decision of State law, as to—

Ms. CAMARILLO. State—

Senator LEE [continuing]. Who should vote in Federal elections?

Ms. CAMARILLO. States decide who gets to vote in various elections, and in Federal elections, I believe that we should be encouraging people to naturalize and then vote.

Senator LEE. Okay, but you're saying that the Federal Government should have no say in who votes in a Federal election.

Ms. CAMARILLO. I don't have a position on that.

Senator LEE. Mr. von Spakovsky?

Mr. von SPAKOVSKY. As a first-generation son of naturalized citizens, I believe only citizens should be allowed to vote in all U.S. elections.

Senator LEE. Ms. Lakin?

Ms. LAKIN. Federal law prohibits noncitizens from voting in Federal elections, and we support and our work focuses on enabling all eligible voters to be able to vote and cast their ballot and have that ballot counted.

Senator LEE. Okay. Now, here's the second question. And again, please give me a yes or no if you possible can. Do you believe that people who are registering individuals to vote—I'm sorry. Do you believe that people registering to vote should provide documentary proof of their citizenship in order to register to vote? Mr. Hewitt?

Mr. HEWITT. I think your first question kind of answers the second. Based upon the applicable rules, Federal or State elections or what have you, we know we have to follow those rules. The question is, what's the impact of those rules?

Senator LEE. Ms. Riordan?

Ms. RIORDAN. Yes.

Senator LEE. Ms. Camarillo?

Ms. CAMARILLO. Voter registration cards and affidavits—when people sign them, people are signing under Federal—under penalties of—depending on the State, either criminal or otherwise—

Senator LEE. Yes.

Ms. CAMARILLO [continuing]. That they're—

Senator LEE. Can I get a yes or no out of you?

Ms. CAMARILLO. I'm sorry.

Senator LEE. Should they or should they not have to require documentation establishing their citizenship?

Ms. CAMARILLO. It's already redundant, in many States, and it's already being asked.

Senator LEE. Mr. von Spakovsky?

Mr. von SPAKOVSKY. Yes, all individuals should be required to provide proof of citizenship.

Senator LEE. Ms. Lakin?

Ms. LAKIN. Documented proof of citizenship requirements are often discrimination. In fact, we sued the State of Kansas and won litigation on this issue.

Senator LEE. Okay. I do find it troubling that these couldn't both all be answered with a simple yes. I think if you asked most Americans, overwhelming majority of Americans would say, yes, you should have to be a citizen to vote in a Federal election, and, yes, you ought to be required to prove it. You have to show identification papers when you board an airplane, unless you're an illegal alien, of course, but that's a different question; to go to the doctor, in many instances; to pick up prescription, in many instances. All kinds of things require identification. Why not voting?

Now, the Carter-Baker report from 2008—keep in mind that the Carter in Carter-Baker is former President Jimmy Carter—recommended that States require voters to use a REAL ID-compliant identification to “ensure that persons presenting themselves at the polling places are, in fact, the ones on the registration list.” And I agree with former President Carter on that, and to that end, I've authored legislation that would allow States to enforce such identification laws, which are so popular among Americans, and with good reason.

The legislation, as compared to the likely unconstitutional John Lewis Voting Rights Advancement Act, would respect the boundaries of Federalism. And that's important, always, that we do that—and that that's one of our twin structural safeguards in the Constitution. Mr. von Spakovsky, in your experience, would more robust voter ID laws disenfranchise legal voters?

Mr. von SPAKOVSKY. The answer to that is no. And that's not my opinion. That's based on turnout data that we now have for more than 15 years, election after election after election. Georgia, for example's, ID law has been in place since the 2008 election. They've seen record registration and turnout of all voters, including Black and Hispanic voters there. And all the studies—one of the ones I cited showed that when you compare all 50 States, IDs do not keep people from voting, particularly because every State that's put in an ID requirement will provide a free ID to anyone who doesn't have one.

Senator LEE. Thank you. Thank you, Mr. Chairman.

Chair DURBIN. Senator Klobuchar.

Senator KLOBUCHAR. Thank you very much, Mr. Chairman. Thank you to our witnesses today. Ms. Camarillo, you testified that just last year alone, over 19 States enacted laws to restrict access to voting, making it more difficult for people—specifically, in many instances, people of color—to vote. Could you talk about which voting restrictions you've seen that particularly impact people of color?

Ms. CAMARILLO. Well, I think that the restrictions for voting are—in Texas, particularly, I think we find that a lot of—some voters are not able to vote because they cannot have an assistant. They're not able to vote—and by an assister, it's an—they call it an assister. These voters need to take someone because they can't either—they cannot read, they don't speak the language, or they're visually impaired, or they simply need someone to help them maneuver the voting system. And that is no longer allowed. We found that when S.B. 1, which is the case that I'm referring to—many voters were confused, were scared that they were not going to be given an opportunity. And there's also a partisan piece where partisans can walk into the booth where you're voting and stand in front of your face and intimidate the voter. It's a strategy to intimidate the voter.

Senator KLOBUCHAR. Okay.

Ms. CAMARILLO. That's one. I've also seen where voters—I'm sorry. You were going to ask—

Senator KLOBUCHAR. No, no, no. Go ahead. I just have a few more. Go ahead, quick.

Ms. CAMARILLO. I've also seen where voters have not been able to go to the precincts because they don't have a ride. They moved the precincts—the voting sites from their neighborhoods to other places that are far, and they don't—

Senator KLOBUCHAR. Yes.

Ms. CAMARILLO [continuing]. Have a ride, and if—

Senator KLOBUCHAR. I saw that in Georgia, when I went down there, when we had our voting rights hearing with the Rules Committee down there. They move it.

Ms. CAMARILLO. Correct.

Senator KLOBUCHAR. In Georgia, there was a different polling place for one voter from the primary to the general election to the special election, so—exactly.

Ms. CAMARILLO. There's also tactics that we can't truly document, that I recorded in my written testimony. And it's part of my experience, where someone will show up to vote, and they're being questioned. There's a woman in Florida that Southwest Voter registered to vote, and she was told that she did not register in time to participate in that particular election cycle, when in fact she had registered to vote in August. So, I'm concerned about laws that are in the books that are hurting people to have the right to vote and exercise their right to vote. I'm concerned that there's an attack on the Latino community, thinking that we're all undocumented. And, in fact, as someone who registers voters and trains people to register voters—and we have registered 3.4 million people—I can tell you that voters that are not citizens will tell you, I'm not a citizen, because they don't want to create any problems.

Senator KLOBUCHAR. Okay. Thank you—

Ms. CAMARILLO. Thank you.

Senator KLOBUCHAR [continuing]. Very much. Mr. Hewitt, when Senator Warnock was speaking, he mentioned the Freedom to Vote Act. As you know, there are a number of bills in there that would supplement the John Lewis Voting Rights Advancement Act, including the Same Day Registration Act, something that has led Minnesota, year after year after year, to have the highest voter

turnout in the country—a number of voter turnout, including with our minority communities, that a lot of States would like to see. The Save Voters Act prohibits States from unfairly purging people from voting rolls. Do you agree that, in order to protect Americans' right to vote, we need the John Lewis bill and also the Freedom to Vote Act? And could you talk a bit about the Freedom to Vote Act?

Mr. HEWITT. Sure. I know there's a hearing, obviously, in Senate Rules later today about Freedom to Vote—

Senator KLOBUCHAR. Thank you for giving us a pre-advertisement for that.

Mr. HEWITT. There you go. There you go. And I'll be there to visit with you all. But, you know, we came to the understanding, in the civil rights community, that there is a double value to having the John Lewis Voting Rights Advancement Act and the Freedom to Vote Act, which some people say is a law just about election administration, but it's really about—it really mirrors, in many ways, the John Lewis bill, because the John Lewis bill and the VRA itself is about all of these kind of death by a thousand cuts, these things that seem innocuous, that seem facially neutral, that seem little—then lead to voter disenfranchisement.

And that's how I think about the Freedom to Vote Act, you know, when we think about election administration, about all of the provisions of that bill that really make it easier for people to vote, right? So, the John Lewis bill is about how we should not make it harder for people to vote. The Freedom to Vote Act is about, how do we make it easier for people to vote in a safe way and a righteous way, in a way that's entirely legal and lawful? And so I think that the twin force of those bills really is the call, the invitation to Congress and to the Senate, in particular, to act.

Senator KLOBUCHAR. Thank you very much.

Chair DURBIN. Thank you, Senator Klobuchar. Senator Graham.

Senator GRAHAM. Thank you, Mr. Chairman. Mr. von Spakovsky, what would you say this legislation's about? What do you think the goal of this legislation is?

Mr. von SPAKOVSKY. Well, bringing back preclearance is to give the very partisan bureaucrats inside the Voting Section, where I first worked when I got to the Justice Department, basically control over State elections. And a lot of groups don't want to have to go to court like other litigants and actually prove a case, prove discrimination. They would rather be able to call their friends and former colleagues, who are now working in the Voting Section, and say, you know, we really don't like this particular bill. You should object to it. And that's the kind of thing that Ms. Riordan and I saw happening when we were there.

Senator GRAHAM. Ms. Riordan, you gave examples of this part of the Department of Justice being sanctioned. You know, in simple terms, it seems to be that people in this Section are more on a political crusade than they are enforcing the law. Is that a fair statement?

Ms. RIORDAN. That's definitely a fair statement. My very first day in the Section, when I was being walked around and introduced, there were political, you know, campaign type signs for the Gore-Lieberman ticket. It was in the year 2000. Obviously, you

know, infraction of the Hatch Act. When Barack Obama won the election in 2008—I come in very early in the morning—somebody had smashed the picture of George W. Bush and taken a picture of Barack Obama out of, like, the newspaper and pasted it to the frame. If they don't like the politics of a particular State, they target them. There were signs on doors that said, "Mess with Texas." It is very, very political. I was shocked at how political it is.

Senator GRAHAM. Yes. Well, I guess we shouldn't be. Are you familiar with the case of Kim O-G-G—I can't say her last name; I don't want to butcher it—the Democratic district attorney in Harris County, Texas. She went to vote, but she was turned away because her ballot had already been cast. Are you familiar with that?

Ms. RIORDAN. I heard about that on the news.

Senator GRAHAM. Yes. So, this is the district attorney for a county in Texas. So, the idea that we want to preserve the integrity of the ballot box, I think, is real. Mr. von Spakovsky, at the end of the day, the Supreme Court decision regarding preclearance was based on evidence—

Mr. von SPAKOVSKY. Yes.

Senator GRAHAM [continuing]. That States in question had advanced. Is that correct?

Mr. von SPAKOVSKY. That's exactly right. And, in fact, remember, Section 5 was put in when voter registration and turnout of African Americans in the covered States, places like Alabama—I mean, look, they were the subject of systematic, widespread discrimination. So, the registration and turnout rates were extremely low. But when the Supreme Court got this decision, Congress wanted to renew this bill based on 40-year-old data. They didn't want to renew it based on current registration and current turnout rates, because if they did, not only were the covered States as good as uncovered States, many of them were far superior.

I just did a study on this. And, for example, in the 2016 election, every one of the formerly covered States, with the exception of Texas, had a higher registration rate than the State of New York. In the 2020 election, six of the nine preclearance States had higher registration than New York, and four had higher turnout. New York, as you know—never been covered, but the point is, there is no longer any radical difference between the formerly covered States and the rest of the country. In fact, they do better than many other States.

Senator GRAHAM. So, if the data is that clear, then why are we trying to do what we're doing? Ms. Riordan?

Ms. RIORDAN. I believe we're trying to take the States' rights from them and federalize all elections and hand a lot of those decisions to partisan bureaucrats within the Department of Justice.

Senator GRAHAM. I think you're right. Thank you, Mr. Chairman.

Chair DURBIN. Senator Coons.

Senator COONS. Thank you, Mr. Chairman. And I'd like to thank all of the witnesses who are here with us today. Former Congressman, late Congressman John Lewis was a personal friend, and I was blessed to have the chance to cross the Edmund Pettus Bridge with him on several occasions, to stand at that bridge at the 50th anniversary and to hand to several of my colleagues a copy of what is now known as the John Lewis Voting Rights Advancement Act,

and to press them to consider cosponsorship. I worked closely with our former colleague, Senator Leahy, on this legislation. I am from a State, Delaware, which has a long history of actually making it hard to vote and where, in Delaware, we have tried, several cycles now, to work to improve things like mail-in voting, same-day registration, and where it is actively being litigated. It is a contentious issue.

Everyone seems to agree that John Lewis was a towering figure in the American Civil Rights Movement and that his legacy needs to be maintained. In fact, it was one of the very few moments in the State of the Union speech, Mr. Chairman, where Members of both parties stood and applauded when he was recognized by our President. Yet, what we should be doing going forward seems strikingly divisive.

In the few minutes I've got, let me, if I could, Mr. Hewitt, just ask you—since the Supreme Court's decision in *Shelby County*, we've seen restrictive voting laws crop up all over the country, including some States covered formerly by Section 5. In 2023 alone, more than a dozen States enacted newly restrictive voting laws. Why did the Supreme Court's decision—briefly—make it more difficult to challenge these laws? And if it became law, how would the John Lewis Voting Rights Advancement Act protect against restrictive voting laws?

Mr. HEWITT. Well, in the covered jurisdictions, the *Shelby County* case made it such that we no longer have, in this Nation, the benefit of the prophylactic power, the power to stop these negative laws, these bad laws from being implemented before they cause harm. But also, there's other damage being done, as well, by *Brnovich v. DNC*. And there's even, also, a case right now suggesting that there's a right without a remedy: that there is a right to not be discriminated against but no right of private action, so to speak. And so I think Ms. Lakin may have spoken to this earlier, but Section 2 litigation is not only time consuming, but it takes so long that the damage will be done, often, before we actually get relief.

Senator COONS. Mr. Hewitt, if I could briefly ask one other question. In many hearings on this topic over many years, now, I've heard concerns and complaints about voter fraud, widespread voter fraud, being used as the reason to advance some of these restrictive laws. How many cases are there of voter fraud in our elections?

Mr. HEWITT. The numbers are infinitesimally small. They're typically not associated with the voters who are pleading with greater access, and really, the fraud squad, as some people call it—they're really—you talk about a solution in search of a problem, that's exactly what this fraud squad is. They search high and low for instances of voter fraud, and they even try to entrap voters, in the case of Florida, and to saying, ah, you can vote now, but we got you. Now we're going to hold you subject to criminal sanctions.

Senator COONS. Well, I'll say this. The integrity of our voting process is an important matter for all of us. I was a county elected official. Many counties across the country administer the election process. I do think voting integrity is important. But the point is, out of billions of votes cast, there are just a handful of examples of voter fraud. I wish this were a bipartisan issue. It was, when

the Voting Rights Act was first enacted, and it was, every single time it was reenacted, for many, many years.

Let me turn last to a concern that I think is timely and relevant and where there's bipartisan legislation being led that could help forestall a very real possible challenge to our next election. We've got the very real possibility that artificial intelligence-generated deep fakes, which have been deployed across the world—recently had an impact in an election in Slovakia that changed the outcome; had a potential impact in the Taiwanese elections, where they were widely deployed; in New Hampshire, on primary day, an AI-generated robocall of President Biden's voice encouraged New Hampshire residents not to vote in the primary election.

Our own election is just months away, and I think we need to act now to protect against the predictably harmful effects that deceptive AI could have on our democracy. Senators Klobuchar and Hawley, Collins, and I have introduced a bipartisan Protect Elections from Deceptive AI Act, which would ban the use of materially deceptive AI-generated voice or audio of a candidate for Federal office in a way that would impact the election or steer contributions. Ms. Lakin, do you agree that AI does, in fact, pose some threat to our elections?

Ms. LAKIN. Senator, I think that the risk of misinformation and confusion is very real and that voters need to have accurate, correct information in order to be able to participate in our democracy.

Senator COONS. Given that there are very, very few cases, relative to the number of votes cast, of actual voter fraud, but there have been demonstrated cases of foreign nations attempting to interfere in and influence our elections—and there's recently been a national election determined, influenced significantly by a deep-fake AI—do you think it's important for us to pass bipartisan legislation like the Protect Elections from Deceptive AI Act, before our own elections this fall?

Ms. LAKIN. It's certainly a concern that this Congress should be looking at very, very closely.

Senator COONS. Thank you. And thank you to all the witnesses today. Thank you, Mr. Chairman.

Chair DURBIN. Thanks, Senator Coons. Senator Grassley.

Senator GRASSLEY. Hans, I'm going to start with you. The goal of Federal elections is to ensure that every U.S. citizen who is eligible and registered to vote should have the opportunity to cast a vote in an election if they so choose. Americans need to have confidence in our elections. The integrity of our elections is paramount to confidence in our democracy, and the votes reflect the voice of the American people. So, what safeguards are in place to ensure ineligible noncitizens don't end up on the voter rolls? And are current measure in place to satisfy this position?

Mr. von SPAKOVSKY. Well, unfortunately, there aren't a lot of safeguards in place. I mean, one of the only ones around is what's called the SAVE System. That's a database at the Department of Homeland Security. It's the same database employers can check with and State agencies can check with, to make sure that someone is a citizen, is somebody who's entitled to apply for welfare benefits. The problem has been for many years that DHS has thrown up red tape and made it almost impossible for election officials to

be able to consult the SAVE database to check the citizenship status of individuals on the voter registration list.

About the only other thing States can do—because they're not requiring proof of citizenship, and there's some bad law on that—is to use jury information. A great amendment to the NVRA would be—you know, right now, the NVRA requires all U.S. attorneys to notify State election officials if someone is convicted of a felony in Federal court, in order—the State to be able to take that into account if felons are not able to vote. A great amendment would be to say that all Federal courts have to notify State election officials when an individual is called for jury duty and is excused because they're not a U.S. citizen. Why? Because the courts get their voter lists from State election officials. They use voter registration lists. But other than that, there's hardly anything out there States can do to check this.

Senator GRASSLEY. Hans, do you think that the John Lewis Act would be constitutional or unconstitutional by the courts?

Mr. von SPAKOVSKY. Oh, I think it would raise serious constitutional questions about the validity now of Section 2, if the changes are made, and I don't think that the bringing back of Section 5 meets the standards that've been laid out by the Supreme Court for showing widespread, systematic discrimination that would justify treating some States differently than others or justifying Federal control over what is, in essence, State sovereignty and the State ability to administer their elections.

Senator GRASSLEY. Ms. Riordan, I'd like to have you comment on a question that another witness spoke to. If this voting rights bill were to become law, so-called preclearance would be reinstated. Can you explain why preclearance is problematic here and why Section 5 was meant to only be temporary?

Ms. RIORDAN. Sure. Well, I think the *Shelby County* decision is illustrative of the issues. As Mr. von Spakovsky has already stated, during that case, the Supreme Court said that Section 5 was temporary, and it was temporary for a reason, right? Because we no longer have rampant discrimination in this country, and we no longer have evasion of court decrees, which is what was happening, you know, during the time that Section 5 was imposed.

If we redo this formula, if the Senate does this and it passed, and it goes back to the Department of Justice, there will definitely be a weaponization of the preclearance process by the Department of Justice. They've done it for the 20 years I was present at the office, so I don't have any reason to believe that that's not going to continue. And if this rampant discrimination that everyone talks about actually exists, why is it, then, that the Department of Justice has only brought nine Section 2 cases since the *Shelby County* decision? They are supposed to be the one group that has, you know, the foresight and all the money of the Federal Government to bring these Section 2 lawsuits that are so expensive, yet there's only been nine since 2013. That's not even one a year.

Senator GRASSLEY. Isn't it ironic, in the 2020 election, the massive increase we had turned out in the election, and then to hear complaints about voter suppression? I yield the floor.

Chair DURBIN. Senator Welch.

Senator WELCH. Thank you very much, Mr. Chairman. Mr. von Spakovsky, do you think that the 2020 Presidential election was rigged?

Mr. von SPAKOVSKY. Senator, that election's over with. There were no cases proven in court to show that it should be overturned, as happened in the—for example, the 2018 congressional race, the ninth circuit. So, what we should be doing is looking forward to try to fix the vulnerabilities that we do know exist in the system.

Senator WELCH. So, what's your answer?

Mr. von SPAKOVSKY. I just gave you an answer. Joe Biden is the President. He was certified as the President. There were no cases in court proven—

Senator WELCH. So—

Mr. von SPAKOVSKY [continuing]. To show that there was the kind of fraud that would've overturned the election. That's the way that, as you know, it works. In the ninth—

Senator WELCH. All right. So, let me—

Mr. von SPAKOVSKY. In the Ninth Circuit—

Senator WELCH. Let me—

Mr. von SPAKOVSKY [continuing]. Of North Carolina—

Senator WELCH. Let me be clear.

Mr. von SPAKOVSKY [continuing]. It—

Senator WELCH. Let—

Mr. von SPAKOVSKY [continuing]. That happened—

Senator WELCH. So, the 2020 election was not rigged?

Mr. von SPAKOVSKY. Was what?

Senator WELCH. Not rigged.

Mr. von SPAKOVSKY. I've given you my answer on this, Senator.

Senator WELCH. You know what? I don't understand a word you said. Seriously. This is, for most folks, a yes or no—

Mr. von SPAKOVSKY. I'll be happy to explain. If you have a case in which you believe that an election was wrongly decided, as—

Senator WELCH. And I don't have much time.

Mr. von SPAKOVSKY [continuing]. Happened in the 9th Congressional District—

Senator WELCH. I don't have much time, so—

Mr. von SPAKOVSKY [continuing]. You go to court, and you prove your case. That didn't happen in the 2020 election.

Senator WELCH. So, do you believe that a lot of those legal challenges—I guess only one was upheld—it was a proper decision by the courts to throw all those challenges out?

Mr. von SPAKOVSKY. I don't have all those cases in front of me, and I haven't—

Senator WELCH. Well, here's—

Mr. von SPAKOVSKY [continuing]. Reviewed all—I haven't—

Senator WELCH. Here's what I'm getting at.

Mr. von SPAKOVSKY [continuing]. Reviewed all the cases.

Senator WELCH. Here's what I'm getting at. There's a subtext here, and the subtext is whether there's going to be ongoing challenges, and there's a certain person running for President right now who's already talking about—still talking about that as being rigged. And election integrity that you're talking about includes getting rid of what has been a significant protection, in *Shelby County*, with preclearance.

Also, my understanding—maybe, Mr. Hewitt, you can describe this—is that since *Shelby*, there have been numerous restrictive voting statutes passed in various States. Can you just comment on that?

Mr. HEWITT. Well, sure. And I think the record's very clear on that. We've heard testimony earlier today. There's something just very strange, whether it's political opportunity or some coordinated effort, that all of a sudden, around the nation, we see so many restrictive voting laws all of a sudden.

Senator WELCH. By the way, my understanding from the Brennan Center study is that the incident rate of voter fraud is about .0003 percent. Does that conform to what you understand the data says?

Mr. HEWITT. It does. I described it earlier as infinitesimally small, and you've given some metrics to that.

Senator WELCH. All right. So, a lot of these voter restriction laws sound valid but have—they sound okay, neutral, which, of course, is what was the case with a lot of the Jim Crow provisions that prevented so many people from voting for so long. It appeared on its face to be neutral, like voter ID laws. But if that is the incidence of fraud—.0003—it seems to me that many of these laws that make it a little bit more onerous for people to vote are laws in search of a problem. Would you agree with that?

Mr. HEWITT. I would wholeheartedly agree.

Senator WELCH. I want to talk a little bit, too, about—this is a slightly different topic, but reenfranchisement laws. Vermont, actually, and Maine are two States that allow felons to vote. Many States have laws that allow a person who's completed his or her sentence to vote. I think that's important, because I think voting is an action, a decision, but the process of voting is engagement, civic engagement, talking with your neighbors, talking with your friends about your point of view, about how you can build community through civic action. I'll ask you, Ms. Lakin, do you have any views on the importance of including the opportunity for people to vote who've completed their sentences?

Ms. LAKIN. Thank you for that question. We absolutely support the restoration of rights for people who have been convicted of felonies or other crimes. These laws, these felon disenfranchisement laws, have been rooted in Jim Crow and unfortunately have continuing impacts on the ability of communities of color in this country to be able to have their voices heard, particularly after they've completed their sentences.

Senator WELCH. Okay. Thank you very much. I yield back, Mr. Chairman.

Chair DURBIN. Thank you, Senator. Senator Cornyn.

Senator CORNYN. Would you raise your hand if you believe that our existing voting laws are rigged to the detriment of African Americans and persons of color? I don't see any hands. I agree with you.

I don't know really where to start. I'm not sure what the John Lewis Voting Rights Advancement Act is supposed to try to solve, if you don't believe that the current system is rigged against African Americans or persons of color. What it does look like, to me, is an enormous power grab by the Federal Government, to the det-

riment of the States like mine, like Texas. I think one of the ways that people get sucked into this argument is this idea that *Shelby County v. Holder* somehow decimated the Voting Rights Act. We know that's false.

In fact, I voted to reauthorize the Voting Rights Act. I believe someone mentioned it was 98-to-0 in 2006. But what we did point out at the time was our Democratic colleagues chose to say that basically this country was still living in the 1960s. In other words, the data that applied to the formula for coverage for the preclearance requirement was not updated to current events, because I think, as has been pointed out, now we're seeing persons of color voting at levels equal to or higher than other parts of the voting population. We should be celebrating the success of the Voting Rights Act. It worked. And thank goodness it did.

But in another sense, we've been fighting since the inception of this country for what the role of the Federal Government is. Is it a national government? Is it a Federal Government, with States having their own sovereign rights? And here, the Supreme Court said, there is no general right to review and veto State laws before they actually are enacted. That's what preclearance provided, in *Shelby County*. And the Supreme Court said, there is no right to that unless it's to remedy past discrimination. And what they pointed out is the Voting Rights Act did work and that now, as I said, the level of voting by minorities was at or higher than that for the general population. I think we should celebrate the success of the Voting Rights Act.

But I have to ask you, Mr. von Spakovsky—and forgive me if I butcher your name. You're probably used to it by now. I know you've studied this area for many, many years, as Ms. Riordan has, as well. Do you trust the Biden Department of Justice to make these decisions?

Mr. von SPAKOVSKY. No, not at all. I mean, just to give you one example, when Arizona decided—you know, one of the things that I've recommended for years is that all States should put in audit requirements. You know, that's ubiquitous in the business world, and States ought to audit their elections after they're over, make sure that everything was done properly, the equipment all works, that they complied with the law. When Arizona decided to do an audit, the Justice Department suddenly said, oh, you can't do that. That's a violation of the Voting Rights Act. Well, that's ridiculous. Of course it's not a violation of the Voting Rights Act.

But, Senator, you were saying, you know, what's the purpose of this bill? Can I give you one example of what I think the purpose is? It makes changes to Section 2 that would make it almost impossible for States to defend ordinary, regular practices of voting.

And the example I would give you is that, you know, Arizona was sued in a case that went all the way to the Supreme Court—the *Brnovich* decision—in which, why were they sued? Well, because, like the vast majority of States, they said, look, you have to vote in the precinct you're assigned to. And if you vote outside of that precinct, we're not going to count your ballot. That's the rule in most States. It's been that way for decades. And yet what the Section 2 change would make is to say, oh, if you are a State, are sued under Section 2, you can't defend a law, you can't claim it's not dis-

criminatory by showing that this is a traditional voting rule that's long established and that has been used in the majority of States. That will no longer be a defense.

Senator CORNYN. Thank you.

Chair DURBIN. Senator Butler.

Senator BUTLER. Thank you, Mr. Chair. Thank you for holding such a timely hearing. I want to thank all of the witnesses for joining today. You know, I came to today's hearing truly with an open mind, believing that free and fair access to voting was in the best interest of both parties and all Americans. And I did find one thing that I agree with Mr. von Spakovsky about. It is not 1965, sir. It is the year of our Lord 2024, and just because we are not being asked to count the number of jelly beans in a jar or bubbles on a bar of soap does not mean that States and local jurisdictions are not indeed continuing to discriminate.

I held a hearing in Montgomery, Alabama just last week, learning about the restrictive laws that were being considered in the Alabama State legislature, targeting, in my opinion and the opinion of many legal scholars in the State and those who are being asked to serve under those laws—targeting communities of color, Black Alabamians, people with disabilities. And I would ask—I'd like to start my question with you, Ms. Lakin, about communities, people who live in the disability community. In Alabama's S.B. 1 that just passed the House last week, there are criminal penalties being proposed, with up to a decade in prison, for those who would assist someone who is living in our community with disabilities, with filling out and completing their absentee ballot.

We heard the testimony of Laurel Hattix, in Alabama, who suffers from lupis and is unable to drive. She would be subject to up to a decade in prison if she gave her neighbor \$5 to take her to the poll to cast her ballot. Now, we know that there are many millions of Americans who live with disabilities, just like Ms. Hattix. Can you talk to us about any cases that the ACLU find themselves in litigation specific to discrimination targeted toward people in the disability community?

Ms. LAKIN. Yes, absolutely. And thank you for that question. Unfortunately, voters with disabilities, for far too long, have been overlooked, and there is unfortunately an enormous cross section between voters of disabilities and voters of color, voters with low income, and the like. And we've seen these attacks, a similar attack as you've mentioned in Alabama, in places like Mississippi and Georgia, and we are engaged in litigation in both. In Mississippi, we have been so far successful in blocking a restriction on who can provide assistance to voters with disabilities in casting their ballot, which I think we should all be extraordinarily concerned about.

Senator BUTLER. And I wonder what kind of political crusade it might be, to advance a person living in a wheelchair to access the ballot. Thank you so much.

Mr. Hewitt, we also learned about the story of Mayor Patrick Braxton, who was elected the first Black mayor of the small town of Newbern, Alabama. I think Mr. Braxton's case is an example of the updated but undeniably discriminatory practices in evolution of State and local jurisdictions. We heard about Mr. Braxton, who

was literally locked out of city hall after being duly elected the mayor of Newbern, but he was locked out by his formerly all-white city council and prevented from taking his seat. I would say, has your organization seen instances of this kind of blatant voter suppression, updated and modernized voter suppression, of election result rejection, that is happening across the country?

Mr. HEWITT. We certainly have. I think the most marked example is not the January 6 insurrection but what happened before then, when the Lawyers' Committee and the NAACP sought to intervene in some 15 cases after the 2022 elections were over, where folks were trying to use the State courts to overturn elections. And sometimes they used extrajudicial means, as well. And so we needed to have an answer in the courts of law, because the court of public opinion is clear: that the election results were over and that we needed a peaceful transfer of power. And so we're very worried about the same thing happening at the Federal level, at the local level, and at the State level, once again.

Senator BUTLER. Thank you, Mr. Hewitt. Mr. Chair, I'm done with my questions and yield back the time.

Senator BOOKER [presiding]. I'd like to recognize Senator Blackburn for her questions. And—

Senator BLACKBURN. Thank you.

Senator BOOKER. And I also want to just take note that I have a lot of power now, because I'm effectively—

Senator BLACKBURN. Yes, you do.

Senator BOOKER. Yes.

Senator BLACKBURN. And—

Senator BOOKER. Thank you. I'm effectively the Acting Chair.

Senator BLACKBURN. Senator Booker, if you and I had all the power we needed, we would straighten out this NCAA, NIL mess.

Senator BOOKER. Amen. Hallelujah.

Senator BLACKBURN. As well as a bunch of other things. Welcome to everyone. Thank you for being here for the hearing. One of the things I repeatedly say is we need to make it easier to vote and harder to cheat. That is what Tennesseans want to see: easier to vote, harder for people to cheat.

And Tennessee has really made some great progress when it comes to addressing how they run elections. And so many different organizations, secretaries of state, different ones, have recognized Tennessee for having the most secure elections in our country. And, Mr. von Spakovsky, I think your organization is one of those that has recognized Tennessee. And, you know, making it easier to vote, making certain those votes are secure, is something that should not be controversial at all.

Now, I think one of the things that has played a role in Tennessee is the fact that a photo ID is required. And I have to show a photo ID when I go to get on a plane, when I go to the pharmacy to get a prescription, when I go to a grandchild's school. If I'm checking in for an appointment somewhere, you always have to show a photo ID. And that is something—it's a basic security measure. But I know there are States like California, Illinois, New York—and they have not implemented that. So, Mr. von Spakovsky, I do want to come to you. Talk a little bit about how Tennessee is ranked number one when you look at election integ-

rity and safe elections, and then talk about the need for a photo ID.

Mr. von SPAKOVSKY. Let me take the second one first.

Senator BLACKBURN. Sure.

Mr. von SPAKOVSKY. Look, I just don't know why we're even still arguing about ID requirements. Like I said, they've been in place in many States since the 2008 election. All of the studies show that not only did registration and turnout not go down in those States, it increased. Georgia, one of the first States to put it in, has had record turnout, and like I said, that one of the reasons is—everybody keeps talking about, oh, people can't get an ID. Every State has put in a free ID for anyone who doesn't already have one, but Americans overwhelmingly have IDs. So, it's just not an issue, and the polling—look, Americans disagree, a lot of stuff, but one thing they agree on, and this has stayed consistent over the past decade, is it doesn't matter whether you're Black or white, Hispanic, Asian, or whether you're a Democrat or a Republican. Overwhelmingly, Americans say, ID is a commonsense requirement, because they have to do it every day.

Senator BLACKBURN. And—

Mr. von SPAKOVSKY. On—

Senator BLACKBURN [continuing]. If I can interject right here.

Mr. von SPAKOVSKY. Yes.

Senator BLACKBURN. Not only do Americans overwhelmingly support that, then-Justice Stevens wrote, in the *Crawford* case, supporting—

Mr. von SPAKOVSKY. Right.

Senator BLACKBURN [continuing]. Photo ID.

Mr. von SPAKOVSKY. Yes. He wrote the majority opinion upholding the constitutionality of it. By the way, that was over Indiana's voter ID law, and with the new law in place in 2008, Barack Obama won the State of Indiana, the first Democrat to win it, I think, since the 1960's.

On integrity, in general, in Tennessee, in 2021, The Heritage Foundation, where I work, premiered a election integrity scorecard. We came up with almost 50 different criteria, best-practices recommendations, on how States should handle their elections. And it covers everything from making sure you have accurate voter registration lists to making sure you have full transparency, so that observers of all the parties can watch what's going on. And then we rated each State according to their rules and regulations in place, and we continually update it. I think Tennessee now is at the top of our rankings, because they've made a whole series of changes to improve the security of the election process.

Senator BLACKBURN. Excellent. Thank you so much. Thank you, Mr. Chairman.

Senator BOOKER. You're very welcome. And just because of the power of the Chair, I'd like to first, before I go to the next Senator, recognize the members of Delta Sigma Theta that are in the audience, a service organization. And I'd also just like to note for the record, so we have this in writing, that I am in a position higher than Tom Cotton, physically, at least—and I think that's very important to note. I would now like to go to the next esteemed Senator, handsome and brilliant. I recognize Senator Cory Booker.

[Laughter.]

Senator BOOKER. I've really appreciated the conversation from the panel, and more than you know. As I travel around the globe and look at developing nations and developing democracies—I've studied the work of Larry Diamond, who works at the conservative Hoover Institution at Stanford—I think that we have this clutch-our-pearls kind of attitude that people in power don't try to effect rules that benefit their power. That's the reality. And the brilliance of our founders was to try to design a government model where there would be checks and balances on that power. It states explicitly in the Constitution about our authority over Federal election laws.

And that's why I'm sort of stunned here about all this conversation that there are not attempts in and around our country of people trying to rig the rules or benefit them. And this isn't a partisan issue. I look at gerrymandering in America, and it is ridiculous. Both parties do it. They try to design maps that I think subvert the ideals of our democracy, which is that voters should choose their representatives, not their representatives choose their voters.

I was very frustrated that, in the Congress before last, we tried to pass a bill that would've created far more drawing of electoral lines, but it was blocked by House Republicans. It's not as partisan as people think, because when I was coming up in Newark, New Jersey, we had a very powerful political machine there. I believe they were doing things to subvert election fairness, and then Republican Chris Christie, who was the U.S. attorney at the time, stepped in to try to ensure fairness. So, let's be clear. It happens. We know that there are people trying to game the system in ways that benefit their dominance in the political system. It is the natural inclinations that our founders talked about.

The Federalist Papers have extraordinary expositions on how power can corrupt, and we are trying to set fair laws to stop it. Gerrymandering is an example. Campaign finance rules—to me, it's outrageous to me. Even the Supreme Court said the fact that dark money could be drowning our politics, like it is today—they called for a disclosure of that. We've tried, time and time again, Democrats, to pass the DISCLOSE Act. No American really wants dark-money billionaires, potentially having foreign influence, to try to influence our elections.

And so I'm not ascribing these issues toward racism. I'm ascribing them toward people that are trying to game the system. When the North Carolina—we already heard the quotes about designing something with surgical-like precision, to racially affect the election. If you look at the actual emails that they pointed to, of the legislators themselves, they were trying to glean electoral advantage. And their thinking was that Black people were going to vote for Democrats, so let's design a system to stop Black people from voting.

And so that's the frustration. We're acting here like these things don't go on, like there aren't people always trying to game it, that are having real effects. One of the most frustrating effects, for me, is just voting wait times. I've seen people designing it so college campuses—it's harder to vote, there's less voting machines, and there are lines I've seen that are outrageous, trying to discourage

kids from waiting on line. Well, the same thing actually happens in African-American communities. In Georgia, the data—and I'll enter the article for the record, without objection—no objection being heard—demonstrate the significantly longer wait that African American neighborhoods have than white neighborhoods.

[Additional material submitted for the record follows.]

Senator BOOKER. And so I'm a little frustrated, here, that we who are guardians of our democracy not trying to get political advantage aren't trying to find ways to make the system more balanced and fair, because the system will be abused if we don't. I heard one of our witnesses talking about there being no—the voter turnout for African Americans. Hey, I've been psyched about it, but when you look at the growing racial disparities in voter turnout—the Brennan Center has a great point to this—these gaps are growing, because of a lot of this gamesmanship.

And so in the remaining minute that I have, I just want to ask this, about this issue of the racial gap in voter turnouts. And, Ms. Camarillo, can you talk about the barriers that voters of color are facing that could drive the kind of growing disparities here and what we can do in a way to make the field more fair?

Ms. CAMARILLO. Thank you. It depends on the States, but one of the things that they're concerned about is, A, their vote's not going to be counted, that the laws also are not allowing them to participate. If they're low income and they live in neighborhoods where the voting polls have been either moved or they're too far away, it's very hard. If they need to get their voter ID, sometimes they don't have the resources, or places are closed. And, frankly, in Texas, the attorney general at the time was Abbott—spent a million dollars to demonstrate that there was fraud, and he found nothing.

So, for us at Southwest Voter, I have to say that, yes, there are more Latinos and more Blacks and Asian communities and voters that are voting, but we're not taking into account the organization and the organizing that is happening by the communities themselves, in spite of the violations and the efforts to block them from voting. In the redistricting case in Texas, we basically have lost five congressional seats that should have been Latino-majority seats, two that were weakened, the 15th and 23rd, and three that we should've gained. And so we see this over and over. And so in that case, I was asked, when I was deposed in our Senate Bill 1 litigation, isn't it true that you're going to be working in South Texas anyways, which is District 15? And I said, that's not the point. If voters think that their vote is not valued when it's cast, why should they turn out to vote?

Senator BOOKER. Thank you. I'm over my time. I want to recognize Senator Thom Tillis next, and there's going to be a peaceful transfer of power now, something very important to the traditions of our Government. I hand over chairmanship to the far more senior Senator, more experienced, wiser, with more hair, Senator Whitehouse.

Senator WHITEHOUSE [presiding]. I'm flattered.

Senator TILLIS. I think I got recognized. I—

Senator WHITEHOUSE. Yes, sir, you did.

Senator TILLIS. Actually, I was just walking in, before I got seated, and you said you were going to introduce a dashing, handsome

person. I said, man, I'm not even at my seat yet. So, thank you all for being here.

I've got a little bit of history here, because my signature as Speaker of the House is on a voter ID bill from many years ago. I remember the negotiation vividly, because I said that, on the one hand, I think it's reasonable to require a voter—an identification. But then I was subject to loud criticism from the right, for also suggesting that HAVA documents and other documents could be used if, in fact, you didn't have a driver's license. I was criticized from the left, for saying—why do you think you need an ID? Some people just don't have an ID.

I said, well, how about if we provide an ID for free? Because it seems to me having a valid Government-issued ID is liberating. It's how I get on an airplane every week. It's how I purchase prescriptions. It's how I fully participate in society. And so I don't really understand it, if the laws are one that tries to do everything that you can to provide a person with good access to an identification.

I had to cast my vote early. I like voting early. I didn't have any problem with remembering to bring my ID with me, but I know if I hadn't, then I could've had other forms of ID that could've possibly given me access to the polls. So, I really just don't understand the down side for overcoming the cost, the accessibility, the number of other things—not to mention, I don't understand if you really don't want a Government ID, if you don't want a Government-issued ID, if you don't want to have access and fully participate in all that requires an ID, up to and including getting a hotel room, then why not vote by absentee ballot? If it's mailed to your home, you can cast a ballot. You don't have to provide an ID. Did that. Didn't need an ID. Last time. I voted early. This time, I voted early in person.

So, I don't know what we're missing here and why we're making this such a polarizing discussion. I didn't have anyone tell me, with any statistical validity, that the law that I was passing—and the HAVA document provisions and everything else—were really being that difficult. And, incidentally, I did hear—I'm going to call you Hans, because I don't want to butcher your last name. I did hear Hans's opening statement, and I tend to—I'm a data-driven person. So, look, if there are injustices, I don't want that. I want to fix it.

And, by the way, I know Senator Booker has left. An interesting thing happens when elections occur. When I was in the minority for 4 years, I signed onto and tried to sponsor independent redistricting. I tried to go to Speaker Hackney, who is a Democrat and the Democrat leader in the Senate, and say, we ought to try and get this done. They were against it. Now, fast-forward 3 years later, I'm Speaker of the House. You know what I did? I endorsed independent redistricting. You know what Hackney did? He finally supported it, but guess what? You know what the Republicans did? They didn't.

So, what people need to do is take the opportunity when they're in the leadership to look their party in the eye and say, we need to end this cycle. There is a way to do it fairly, and there is a way to do it with political considerations on the end. But in the same way that voter ID laws have been politicized—and I'm not trying—what I want to do is maximize access to the ballot. If you can tell

me how I can tweak a voter ID law and still keep what I think is a rational expectation at the time somebody's going to vote, the same expectation that's required at the time I'm going to go through security at an airport or to check into a hotel or get my prescriptions, count me in. I'll fix it. But I think that some of these discussions are politically motivated and unproductive.

Hans, I know technology well. I can still download the voter files—and have, fairly recently—in North Carolina, put it in an Excel spreadsheet, an Access database, go through and find people that look roughly my age or the age of some other ethnicity based on a name association, and I can find a lot of people who haven't voted for years. Now, if I'm a smart person and I know that there are certain districts that are going to win by a couple of hundred votes—there are congressional races that are won by a couple hundred votes—I can guarantee you I can find a couple of hundred people, spread out over several precincts, who have not voted, and if I chose to, going in with my name or going in with their name, vote, and without a voter ID requirement, I could literally—I wouldn't, just so—my comm staff is watching. I wouldn't do this, but a bad actor could literally reverse the outcome of an election by abusing the fact that you don't have to present an ID. Do you agree or disagree with that?

Mr. von SPAKOVSKY. Well, I agree. And, in fact, I wrote a case study about a State grand jury report that was published in New York, conducted by Elizabeth Holtzman, former Democratic Congresswoman who then went back and became a DA, and she released a report, entire grand jury investigation. That's exactly the way she found that, for many years—

Senator TILLIS. Thank you.

Mr. von SPAKOVSKY [continuing]. Elections—

Senator TILLIS. I'm cognizant of the time and the fact the vote's going on. Folks, people are interfering in our elections. Foreign actors are smart enough to take what I can do on an Excel spreadsheet and a laptop and do it at scale. Let's try and figure out how we get past the political divide, here, and recognize that this is a legitimate discussion to have about integrity of elections—so, not having a political hearing; have one with results. And, by the way, count me in if everybody, when they're in a position to make a change and they have the gavels—let's also work on redistricting. Thank you.

Chair DURBIN [presiding]. Senator Hirono.

Senator HIRONO. Thank you, Mr. Chairman. I thank everyone for testifying on this really important issue, because practically nothing, aside from a woman's right to control her own body, could be as important as voting. And we know that there are all kinds of efforts, after *Shelby County*—I think some 13 States immediately enacted what I would deem to be voter suppression laws, and these take all kinds of forms. And, in fact, it's to make voting harder: anything that makes voting harder, such as changing the times that people can vote or changing where people can vote or restricting the kind of identification that can be used to go and vote. These are all, I think, efforts—these are all efforts to suppress people's votes.

So, I have a couple of questions relating to what will be happening probably in this election cycle. I did want to ask one of our testifiers a question relating to the robocalls. So, this is for Mr. Hewitt. Last year, your organization brought to light a racially targeted voter suppression operation in the form of a robocall scheme. Probably these kinds of schemes are going to be utilized in this upcoming election season. I think they're pretty easy to do and maybe not that hard to stop. Can you, Mr. Hewitt, tell us a little bit more about the case that you brought? And what kind of robocall was it, and who did it target?

Mr. HEWITT. Thank you, Senator Hirono. During the 2020 election cycle, we received, through the Election Protection Coalition Hotline, 866-OUR-VOTE, calls from voters indicating that they were receiving robocalls in which there was apparently a voice actor, we later learned, who was hired to say something to the effect of, if you vote by mail, the information will be used against you to collect outstanding debt, to execute outstanding police warrants, and to force mandatory vaccinations. The kicker line was, don't give your information to the man. We traced this to a gentleman named Jacob Wohl and his compatriots who, we learned, on the cheap were able to send 85,000 such robocalls, and they tried to target Black voters.

We filed suit under Section 11(b) of the Voting Rights Act. These individuals were later prosecuted successfully and convicted, and we won on summary judgment, and we're going after damages from these folks, as well. We represented the National Coalition on Black Civic Participation, which had to divert resources to address these issues and reinform these 85,000 voters about what the law really provided. That was done on the cheap. That was in the 2020 cycle.

Today, the same robocall could be done in an AI-assisted way, and it could clone the voices of people like Barack Obama or Morgan Freeman or Oprah Winfrey or anyone who's of notoriety, and people can be fooled. And so we need protection from this. We won our case because that was found to be voter intimidation, but not all mis-and dis-info that's designed to chill the vote is going to rise to that level. So, we need more protections.

Senator HIRONO. Aren't there bills that have already been introduced that will prevent these kinds of robocalls from occurring?

Mr. HEWITT. There certainly are some bills introduced which we could certainly talk about and figure how we can all rally around and support. There's also action by the executive branch, by the FCC, to ban use of robocalls at least in federal elections—AI-assisted robocalls, that is. And so when we think about how we make it easier to vote, and how do we actually make it harder to stop people from voting, we have to think comprehensively in this way.

Senator HIRONO. Considering that the Voting Rights Act used to be reauthorized in a bipartisan way for decades, and suddenly the Supreme Court decided to become very activist, and the *Shelby County* pretty much decimated the Voting Rights Act, and then they went on in another case to make it even harder to go after Section 2 violations—so, I do have a bill that some of you, your organizations, support: the Time Off to Vote Act. This is a bill that would require employers to provide 2 hours of paid time to vote.

So, for Mr. Hewitt and Ms. Lakin, your organizations support this bill. Can you express or explain a little bit why you think that this is important, even in places where there is voting by mail?

Ms. LAKIN. Yes, absolutely. We definitely support this bill. There are far too many people in this country who are unable to take time off of work to be able to access mail balloting, which isn't available in the same way across the country. And so being able to, first of all, recognize the importance of voting, recognize the importance of employers to provide that opportunity for voters is extraordinarily important and increases access in a way that we absolutely support.

Senator HIRONO. Mr. Hewitt, would—

Mr. HEWITT. We support—

Senator HIRONO [continuing]. You like to add—

Mr. HEWITT. Thank you, Senator. We support that bill, as well. And as I talk to people in corporate America, we ask them to do the same, whether they're legally required to or not, and also lift up what they're doing, because their reputational capital matters. We want to mainstream not just the act of voting but also the importance of opening up pathways to be able to exercise that right.

Senator HIRONO. This bill already has dozens of sponsors. You know, can one of you submit the list of all the kinds of voter suppression laws that have been enacted across our country? My time is up, but maybe one of you can supply that to us, because voter IDs is just one of many, many ways that—dozens of ways that voter suppression is taking place in our country.

Chair DURBIN. Thanks, Senator Hirono.

Senator HIRONO. Thank you.

Chair DURBIN. Senator Whitehouse.

Senator WHITEHOUSE. Thanks very much, Chairman, and thanks to all of the witnesses for being here. I'd like to take my time, as we close out this hearing, to interrelate the problem that we're talking about today with the related problem of right-wing capture of the U.S. Supreme Court, an enterprise which the Center for Media and Democracy says is going to cost \$570 million. Pretty darn big number to spend if you don't expect results. So, sure enough, it seems that they got results for their expenditure, and I contend that one of those results was the *Shelby County* decision. And I'd like to focus a little bit on the fact-finding piece of that decision.

I think we all know—anybody who's a lawyer in the room knows that, as a general proposition, in the American system of justice, the facts get found at the district court level. That's where the adversarial process can be brought to bear on potentially false facts. That's where the parties who are charged in our system to bring in facts and present to the judge have the opportunity to do that. That's where appellate scrutiny of errant fact-finding can take place. And the result of all of that is quite a robust and honest fact-finding process in the United States system of justice.

Those safeguards fall completely apart when, at the very end of the day, after the arguments, after the briefs, at the very highest court level, in the Supreme Court, the Justices in the majority invent new facts. Just as a procedural matter, they're not supposed to do that, and it's particularly frustrating and concerning when

the facts they find are false ones. In *Shelby County*, the majority opinion determined that things had changed dramatically on racial gerrymandering, voter suppression, and other issues in the preclearance States—the ones that were under the rule that they had to submit new rules for clearance to a court or to the Department of Justice before they could proceed—and made the decision that this part of the Voting Rights Act was no longer justified by current needs.

And that question of how much things had changed and what the current needs were had no foundation in the court or the legislative record. There were lower court determinations that pointed out significant voter suppression efforts in *Shelby County* itself and in Alabama more generally. What the court did was to take that statute and look at it as a facial challenge to the statute which got it by having to reckon with the judicial record that had been established of persistent voter suppression efforts. So, they just shot by the record that existed.

That was supplemented by a Congressional Record from the reauthorization of the Voting Rights Act, which was very robust and represented hours of hearings, enormous amounts of documentary work, testimony from experts and advocates and people in the preclearance States. And the Congressional Record was very clear that reauthorization was justified; that some of the techniques of voter suppression had changed, but even though some of the techniques had changed, new techniques had emerged, and therefore the preclearance process should be renewed. And that was accomplished on a bipartisan basis, with a massive bipartisan vote in both houses.

And what the court did was simply pay no attention to the Congressional Record, to basically write it off. Well, folks, we're an independent branch of the Government. We've got every bit the right of the Supreme Court to decide what the facts are in a matter. We're actually the place where that decision better belongs, because if we get it wrong, voters can have a say about that, whereas if the Supreme Court gets it wrong, we're stuck with zombie decisions based on false facts that just persist and persist and persist unless and until the Supreme Court is willing to clean up its own errors. But it's hardly likely that they will persist in cleaning up their own errors, when they went ahead and made the errors in the first place.

So, there's a test of whether or not this was accurate, and the test was real life. And in real life, as soon as the preclearance was lifted, there came an avalanche from preclearance State after preclearance State: over 100 pieces of legislation, sometimes targeting minority voters with what one court called surgical precision—surgical precision—to affect the election outcomes to the benefit of Republicans in those States. That is the background that bothers me. My time is expired on this, but I did want to make that point, and I thank the Chairman for holding the hearing.

Chair DURBIN. Thanks, Senator Whitehouse. And Senator Ossoff.

Senator OSSOFF. Thank you, Mr. Chairman. Thank you to our witnesses. You know, Mr. Hewitt, it is extraordinary, the lengths to which Republican State legislators in Georgia have gone to try to make it harder for some folks to vote. They passed legislation

that makes it harder to request an absentee ballot; that shrinks the period of runoff elections, to drive up lines at polling places during early voting in runoff elections; that allows anybody to file limitless frivolous challenges to the eligibility to vote of their own neighbors. So, 6 activists, on the basis of this, in 2022 challenged the registrations of 89,000 Georgia voters. All of this intended to make it harder for some folks to vote and therefore to gain an edge in elections. It's about partisan political power.

I am introducing today legislation called the Right to Vote Act, and this bill would empower voters to challenge in court any action taken by a State or local government that makes it harder to vote and force that State or that locality to demonstrate that the restrictions serve some governmental purpose and are the least restrictive means of doing so. Mr. Hewitt, why is it essential that voters be able to challenge voter suppression policies in court?

Mr. HEWITT. It's essential because otherwise they have rights with no remedy, and that's exactly what some people are after. You know, we had to fight tooth and nail, Senator Ossoff, just to get a preliminary injunction on a couple of those provisions that you mentioned. On the line-warming provision outside of 100 feet, 150 feet of a polling place and also the provision that trick voters, where you have to have your date of birth on an absentee ballot—and many people just write the date that they're submitting the ballot, by instinct, and so it was viewed as immaterial by the court. But there's so many other provisions that have not been addressed.

But your legislation is so critical, we believe, and we're glad to see you introduce it, because the notion of a positive, affirmative right is what we should have in this country. We have the constitutional provision that prohibits discrimination in voting and statutory provisions which we seek to strengthen, but a positive, affirmative right is what this country should be all about. And so we applaud your introduction and look forward to supporting your legislation.

Senator OSSOFF. Well, thank you for supporting the bill. And the basic idea is that if States or local governments are going to make it harder for eligible voters to vote, then they should have to be able to prove in court why it's necessary and that it's the least restrictive means of achieving whatever their objective is. And I just want to reflect, in closing, here, on the context for what's happened in Georgia.

Mr. HEWITT. Well—

Senator OSSOFF. Let me just say, Mr. Hewitt—we had just concluded a Presidential election and two of the most consequential Senate runoffs in U.S. history. Democrats had prevailed in those races. The former President, as you'll recall, had put immense pressure on the Governor of Georgia, the Secretary of State of Georgia, to commit what may have been felony election crimes and overturn the results. You'll recall the former President saying, just find me 12 or 13,000 votes, to try to overturn the outcome of the election. No evidence whatsoever supporting the former President's conspiracy theory has been presented.

There was just a lengthy piece written in the AJC by a gentleman named Ken Block, who was hired by the Trump campaign to try to find this alleged fraud. He found none. Nevertheless, the

State legislature advanced this legislation, passed a law to drive up the time it takes to wait in line to vote during runoffs, make it so no one can bring you so much as a drink of water while you're standing in line, allow these unlimited challenges—I mean, the fact that people are spending their time filing frivolous challenges to their fellow Americans' eligibility to vote should outrage us. And we need to establish, as a matter of Federal law, that voters have a say in court, where their rights are infringed without some specific reason for the restriction and a demonstration that it's the least restrictive means of doing so. I thank you all for your testimony, your expertise, and your advocacy.

Chair DURBIN. Thank you, Senator Ossoff. There's one more Senator on the way, so I'll just wait and kind of pause for a moment, here. But let me say a word to my colleague from Georgia. I think you've really put your finger on the major issue here. It is time for us to establish the right to vote in this country, and those who would take away that right have to pay a price and answer to the judgment not only of history but of their peers at this time in history. I think you're moving in the right direction, and I want to support your effort in that regard.

I think it's also important to note that the excuse—and I call it an excuse—given for a lot of this misconduct is voter integrity. And when the facts come through and it's .003—maybe I missed a zero there—003, the incidence of fraud and abuse, you have to ask yourself, what are you sacrificing in the process, to have this kind of scrutiny and this kind of obstacle in the path of the voter? They're trying to exercise their right. It's a rare, rare occurrence. We want to eradicate it if we can, but to do it at the expense of people's right to vote is just fundamentally wrong, as far as I'm concerned. So, thank you for raising that issue. Appreciate it very much. We're going to wait here for a moment.

Senator OSSOFF. I would note, Mr. Chairman, since we're waiting for a colleague to arrive, something else that happened during that infamous period where the former President was hell bent on overturning the result in Georgia, based upon baseless conspiracy theories. The U.S. Attorney for the Northern District of Georgia resigned because he was coming under pressure from the White House or the Trump campaign to participate in this effort to overturn the election result. And let me just remind everyone, again, as we wait for our colleague to arrive: zero evidence. Zero evidence. The very man hired by the Trump campaign to try to find this alleged fraud, to substantiate this conspiracy theory, just wrote a long article about how he found nothing. Nothing. Thank you, Mr. Chairman.

Chair DURBIN. Senator Cruz.

Senator CRUZ. Thank you, Mr. Chairman. Once again, we're at a hearing for an incredibly partisan piece of legislation, just after last week, where all of us witnessed the most partisan, angry, bitter, divisive State of the Union speech in the history of our country. So, I guess we shouldn't be surprised that Democrats, once again, seek to divide us.

Contrary to the prevailing Democrat narrative, happily repeated by the corporate media, that Republican-sponsored legislation would herald a return to Jim Crow—I would note, by the way, Jim

Crow laws were drafted by Democrats to ensure the voters could only elect Democrats; that's what Jim Crow was designed to do—the reality is a majority of Americans support legislation that protects election integrity, that protects the right to vote. And yet today Democrats are not interested in election integrity. They are interested in power, power by any means necessary. And so the Democrats' focus is on controlling elections and controlling the outcome.

There's an irony. Today Democrats love to beat their chest and say they are defending democracy, and yet all across the country we see Democrat courts and Democrat officials who have been trying to throw Donald Trump off the ballot, because nothing protects democracy like preventing the voters from voting for your opponent. When the Colorado Supreme Court decision came down, stripping the voters of Colorado of the right to vote for President Trump, I said that day the decision would be reversed by the U.S. Supreme Court, and I said it would likely be reversed unanimously. It was reversed unanimously. I invite anyone in this room to point to even one prominent Democrat who criticized that baldly anti-democratic power grab in not only Colorado but Maine and Illinois. Stood up and said, we hate democracy, and we will not let the voters vote for our opponent.

In the Supreme Court, I led a brief on behalf of 179 Members of Congress, arguing that Colorado's actions striking President Trump's name from the ballot were unconstitutional and that they endanger democracy. You know who didn't join that brief? Even a single Democrat. Because when it comes to democracy, today's Washington Democrats have zero interest in the voters actually deciding. What they're interested in is anything that maintains Democrat power. And what they oppose is anything that creates even a tiny window that the voters might choose to vote for somebody else.

Today, Democrats are pushing a bill that has many terrible provisions, but let's cut to the heart of it. This bill would institute two types of preclearance: preclearance for everyone Democrats don't like and preclearance for everything they don't like. This is about power. This is not about election integrity. This is the opposite of election integrity.

Here's how it would work. Every State and local government across the country would have to submit certain voter changes, things like voter ID requirements or prohibitions on ballot harvesting, to radical partisan activists at the Biden Department of Justice like Kristen Clarke, who has not been shy about her hatred of voter integrity laws. And, by the way, spoiler alert, the Biden Justice Department would refuse to preclear all of them. Anything enhancing election integrity, the Biden Department of Justice is opposed to. Similarly, State and local governments that the Democrats don't like would have to submit any voting changes to the Biden Department of Justice, which, sadly, has been the most partisan and political Department of Justice in our Nation's history.

Mr. von Spakovsky, welcome back to the Committee. Although Democrats are holding this hearing under the guise of caring about voting rights, it's ironic, because they're the party that just attempted to disenfranchise millions of Americans. I want to talk to

you about that irony, Mr. von Spakovsky. How many Colorado voters would've been disenfranchised if the Democrat Supreme Court had affirmed—if the U.S. Supreme Court had affirmed the Democrat Colorado Supreme Court?

Mr. von SPAKOVSKY. Four and a half million registered voters.

Senator CRUZ. Does disenfranchising four and a half million voters—is that enhancing democracy?

Mr. von SPAKOVSKY. No.

Senator CRUZ. Are you aware of any major Democrats who spoke out in support of democracy and against disenfranchising millions of people in Colorado?

Mr. von SPAKOVSKY. I am not.

Senator CRUZ. Are you aware of any major Democrats who spoke out against disenfranchising voters in the State of Maine?

Mr. von SPAKOVSKY. I am not, and that would've been a million registered voters.

Senator CRUZ. Are you aware of any major Democrats who spoke out against disenfranchising voters in the State of Illinois, which is the home State of the Chairman of this Committee?

Mr. von SPAKOVSKY. I am not.

Senator CRUZ. And that was one lone district judge who said, nope, the people of Illinois don't get to vote for the Republican nominee for President. Mr. von Spakovsky, you wrote a November 2023 report with two important findings, utilizing 2016 and 2020 Census Bureau data. What were your conclusions regarding the nine formerly covered states under Section 5?

Mr. von SPAKOVSKY. That they had registration rates and turnout rates close to the national registration or turnout rate or above it, and, in fact—

Senator CRUZ. And how do they compare to New York and California?

Mr. von SPAKOVSKY. Yes. Well, they all did better than New York and California, including the turnout of—registration, turnout not just of all voters but registration, turnout of Black voters.

Senator CRUZ. Thank you.

Chair DURBIN. The Fourteenth Amendment, Section 3, makes reference to a set of facts which clearly applied at the time, in the 19th century, and most people assumed would never, ever occur again in history. And that was the existence of an insurrection in this country. And Section 3 says that no person shall be a Senator or Representative in Congress or elector of a President, Vice President, or hold any office, civil or military, under the United States or any State, who shall have engaged in insurrection or rebellion against the same. To my knowledge, that had not been tested before. It reached the point where we relied on the Supreme Court to rule on how we would establish that an insurrection occurred and a person was engaged in.

And the reason, of course, it was raised is because of January 6, 2021. I remember that day. I think all America remembers that day. What some called tourism turned out to be an insurrection, and we were rousted from the Senate Chamber and sent to a safe place until the Capitol Building of the United States could be secured again. It was clearly designed by President Trump to send his supporters down to stop the process of counting the electoral

votes. He disputed the outcome of the election. That was his recourse.

Let me tell you what one Senator said about it. He said afterwards, “He didn’t get away with anything yet. We have a criminal justice system in this country. We have civil litigation. And former Presidents are not immune from being accountable by either one.” That quote comes from Senate Minority Leader Mitch McConnell, who said that about the insurrection that occurred on January 6.

What the Supreme Court was asked to do was decide, in the context of 2024, where are we in terms of that language, the rather clear language in the Fourteenth Amendment, Section 3. The Court rejected the plaintiff’s claims and found that “because the Constitution makes Congress, rather than the States, responsible for enforcing Section 3 of the Fourteenth Amendment against Federal officeholders and candidates, individual States cannot bar former President Trump from appearing on a ballot for the 2024 election.” They didn’t say that the President was not engaged in an insurrection, but they said that isn’t to be decided by individual States. It’s to be decided by Congress.

I don’t think there was any great conspiracy here. There was a set of facts no one anticipated when this was originally written back in the 19th century. So, that is a fact, and what I’ve read is directly from the Supreme Court decision. I appreciate all—

Senator CRUZ. Mr. Chairman? If I could ask a question to the Chairman, is the Chairman saying that you disagree with the unanimous decision of the Supreme Court, and do—

Chair DURBIN. No.

Senator CRUZ [continuing]. You believe the voters should be prevented from voting for President Trump, if they so desire?

Chair DURBIN. No. I didn’t say that. I—

Senator CRUZ. That’s why I’m asking.

Chair DURBIN. I stand by the decision of the Court.

Senator CRUZ. Okay. Good.

Chair DURBIN. I appreciate all the witnesses appearing before the Committee today. John Lewis, who was the inspiration for this hearing, famously described the right to vote as “precious, almost sacred.” I believe we have a sacred duty as Members of Congress to protect this right. Throughout his life, John Lewis fought for legislation to combat voter suppression, and it is a great tragedy he passed away before Congress acted to restore the Voting Rights Act. Our country owes an outstanding debt to John Lewis and countless others who tirelessly fought to ensure equitable access to the ballot. I hope this Congress will honor their legacy by finally enacting this act into law. This hearing will remain open for a week, and questions may be submitted to the Members of the panel who were kind enough to be here today.

Chair DURBIN. With that, the hearing stands adjourned.

[Whereupon, at 12:35 p.m., the hearing was adjourned.]

[Additional material submitted for the record follows.]

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Southwest Voter Registration Education Project

US Senate Judiciary Committee
The Right Side of History: Protecting Voting Rights in America

Tuesday, March 12, 2024
10:00 AM
Dirksen Senate Office Building Room G50

Testimony Prepared and Provided by
Lydia Camarillo
President
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Southwest Voter Registration Education Project

Testimony Prepared and Provided by

Lydia Camarillo

President

Southwest Voter Registration Education Project (SVREP)

Good morning, Chairman Durbin, Ranking Member Graham, and U.S. Senate Judiciary Committee members. Thank you for the opportunity to testify before the US Senate Judiciary Committee. I come before you in support of the John Lewis Voting Rights Advancement Act (JLVRAA) and urge you to enact this important legislation.

I am Lydia Camarillo, president of the Southwest Voter Registration Education Project (SVREP). For over twenty-five years, I have had the pleasure and honor of serving as vice president, executive director, and for the last five years as its president.

SVREP is a nonprofit, nonpartisan organization founded in 1974 in San Antonio, Texas, by the late William C. Velásquez. SVREP has served and empowered the Latino community for fifty years. Since opening its doors, it has registered 3.4 million Latinos; no other Latino or non-Latino group has registered more Latino voters than SVREP. SVREP has won 210 voting rights lawsuits and trained over 150,000 Latino leaders.

In 1968, four years after the Civil Rights Act, there were still signs that read “No Dogs, No Blacks, No Mexicans.” My predecessor, Willie Velásquez, participated in meetings led by lawyers and League of United Latin American Citizens (LULAC) members during this time. They met to form a legal arm mirrored after the NAACP Legal Defense Fund to fight discrimination against Latinos in the workforce, government representation, and political access. LULAC’s lawyers formed the Mexican American Legal Defense and Educational Fund (MALDEF.) Willie Velásquez determined he would organize a nonprofit similar to the NAACP *Voter Fund* instead.

As Willie Velásquez organized communities across the southwest, he sought technical assistance from the late Congressman John Lewis while the Congressman worked for the Voter Education Project (VEP.) Congressman Lewis provided guidance and the knowledge to register Latino voters. US Representative Lewis’s experience registering Black voters gave a blueprint to SVREP for registering Latino voters. Willie Velásquez gained the knowledge and technical assistance to register Latino voters from the legendary icon, a hero to us all, whose name is on this bill today.

My tenure with SVREP provides me with a perspective where I have personally witnessed how states enact laws to suppress and dilute vote, particularly the vote of Latino voters and other racial and ethnic communities. I have also continued to serve as the Chair of the Texas Latino Redistricting Task Force since 2010.

We must be reminded why we are urging for the reinstatement of Section 4(b) of the Voting Rights Act and strengthening the VRA to help save America’s democracy. In the past, Latino voters have been blocked from voting with the poll tax. Voting rights groups challenged that poll tax as violating the U.S. Constitution, and won, but this took years. Once this pattern of discrimination was ruled unconstitutional by the courts, new laws, like the requirement to read, were enacted to block potential voters. There is a long list of laws throughout our nation’s

history that were enacted to suppress the vote, dilute the political power of the Latino electorate and others. This includes literacy tests, English requirements, long residence requirements, and proof of citizenship requirements, to name a few.

Changes in election laws that create barriers are evolving. These laws are now harder to block, and it takes years to overturn them. In the time it takes to determine the legality of a challenged election law, countless Latino voters are blocked from exercising their right to vote. The John Lewis Voting Rights Advancement Act provides a legal framework to stop any discriminatory changes in election law before it could be implemented and would allow groups like SVREP and MALDEF to better protect the right to vote for all eligible to vote Latinos.

Voter suppression manifests in ways we can identify and see in real time. The John Lewis Voting Rights Advancing Act will help to mitigate and stop ongoing efforts to suppress and dilute voting rights in marginalized communities, particularly in states with large Latino populations. Voter suppression efforts often target Latino communities because they consist partly of Spanish speakers, and because they are perceived as an immigrant community, oftentimes assumed to be a primarily undocumented immigrant community. While the Latino community includes both documented and undocumented immigrants, Latino families have lived in states like Texas, California, and other southwestern states before these states became part of the United States. I have seen dozens of voter suppression laws that equally target not only Latino immigrants who are here legally, but also Latino US citizens whose families have lived here for generations.

In previously covered states or localities, Section 5 of the Voting Rights Act (VRA) requires that any proposed voting changes must be approved by the Department of Justice (DOJ) or the U.S. District Court for the District of Columbia to assure that the changes do not harm voters of color. However, it is Section 4(b) of the VRA that identifies the jurisdictions to which Section 5 can be applied, and without the coverage formula formerly included in Section 4, Section 5 is unenforceable. To protect the voting rights of millions of Latino voters, Congress must vote to update the coverage formula in Section 4 of the VRA to ensure that states or localities with a history of discrimination are covered by the VRA's preclearance process, and that certain election practices, used historically to erect barriers for Latino voters, must also be reviewed.

SVREP strongly recommends and urges the US Congress to vote to update and strengthen the VRA because that will not only solve the current discrimination voters face in certain states but also prevent future discrimination voters in other states could experience.

Voters in the states and communities that were protected under Section 4(b) of the Voting Rights Act are currently facing new challenges as new laws have been enacted by the formerly covered states to dilute their vote and suppress the Latino vote. For example, over several election cycles, when I vote at my precinct, located in a majority White neighborhood, I am told that I am not registered to vote. I have lived in this home since 1996. On one occasion, I witnessed a Latina voter rushing out of the polling precinct site, and she expressed disappointment and sat down on the bench by the line to vote. I reached out to speak to her, and she was embarrassed. She kept saying, "I know I am registered to vote." Unfortunately, she left in a rush, and I was unable to help her.

Just how many voters, like that Latina, were told that they were not registered to vote in that precinct by the election poll workers. These voters' right to vote were harmed. How many? We will never know.

One Latina voter that SVREP registered to vote in Florida was told she registered to vote after the voter registration deadline. This voter registered to vote in August, not October. She was finally allowed to vote after she called our office. I told her to tell the precinct Judge that she was going to call the press to expose voter suppression and violation of her right to vote. I am happy to share that the voter cast her vote in that election cycle.

Last year, over 19 states enacted thirty-four laws to restrict access to voting. These laws included obstacles to vote-by-mail, new voter ID laws, proof of citizenship, and limitation to voter assistance, especially for those with limited English or Spanish-only speakers, visual impairments, and voters who need assistance when voting. Texas counties eliminated early voting sites. They reduced the days and hours of operation of other early voting sites, particularly those in Latino neighborhoods where Latino voters were accustomed to voting. Several years ago, after the *Shelby County v. Holder* decision, the City of Pasadena moved to change its single-member district voting system to an at-large voting systems that would have limited the Latino community representation on the city council, if it had not been struck down in court.

The John Lewis Voting Rights Advancement Act will help protect the voting rights of the Latino community in Texas, and across the southwest. For the first time in Texas history, an estimated three million or more Latinos will vote in the 2024 election. While the number of Latinos cast their vote this November will be historic, we know millions more would be able to vote if Texas enacted laws that provide for same-day voter registration, online voter registration, ballots mailed to every registered Latino voter, and allowing students to vote using their student identification.

SVREP has taken action to enforce the voting rights of Latino voters. For example, SVREP sued Texas for its discriminatory redistricting plans. The State of Texas has gerrymandered 5 congressional districts away from Latino voters in the *LULAC v Abbott*¹ case. SVREP is a plaintiff in *LULAC v Abbott*¹. We challenged the state of Texas on four redistricting maps at the congressional, State Senate, State House, and State Board of Education levels. Our legal challenge argues that fifteen districts were either weakened or eliminated. Congressional Districts 23 and 15 were weakened from being Latino-majority districts. There should also be three more Latino-majority districts due to Latino population growth in Texas since the 2020 Census. Texas gained two new congressional seats, but Texas Latinos lost five congressional seats despite their increase in total population and the increase in their percentage of the total population. Additionally, 40.2% of the Texas population is made up of the Latino community, while the non-Latino white community is only 39.8% of the Texas population. However, there are 7 Latino-majority districts in Texas and 27 non-Latino white-majority districts.

SVREP also sued Texas on its Senate Bill 1, one of the worst bills passed by the legislature to prevent Latino voters from casting their vote. One of the provisions allows for partisans to stand before any voter to intimidate the voter, looking on in violation of their right to vote in private. SVREP and the other plaintiffs won against one of the law's provisions that required vote-by-mail ballots to be signed according to rules that harmed hundreds of 65 and older voters who

voted for years with vote-by-mail ballots. However, this case is still pending, and the remaining provisions result in voters voting without their assistor of voice or without assistance, and some voters are unable to cast their ballot. For example, one voter, Mr. Louis Perales, is 76 years old and has a number of health concerns. He has voted by mail for years, but in the March 2022 Primary Election, his ballot was rejected after he struggled to complete his vote by mail ballot and did not include his identification number because the location to place the information was under the flap and he did not see it. He was not able to cure his ballot, and so his ballot was not counted for that election.

In 2019, Texas was blocked by an SVREP lawsuit from purging 100,000 Latino voters from the voting rolls based on outdated driver's license or state identification information. These voters received their driver's licenses before they naturalized. Once these Latino voters naturalized, they registered to vote and cast their vote in the 2018 election.

In 2022, Arizona enacted House Bill 2243, which will purge voters, primarily Latino voters. SVREP anticipates that close to 1,000,000 Latino voters will be registered to vote in Arizona by the November 5, 2024, presidential general elections. SVREP sued Arizona to stop H.B.2234 from being enacted.

The Arizona House Bill is frightening if ever implemented. For example, under the law, any third party could claim without evidence that a voter is not a US citizen and, therefore, is placed on the purge list. This provision was recently struck down by the U.S. district court, but other provisions, such as the use of old driver's license data, remain in place. While voters will have time to cure the outrageous allegations, this can take place every month. We believe that this will be a serious detriment for voters to find time and resources to prove they are citizens. HB2243 will impact Latino voters.

In Georgia in 2020, SVREP called over 200,000 Latino, Black, and other ethnic voters whose ballots had to be cured to ensure their votes would count. SVREP mobilized the Latino vote with multiple live contacts in Georgia in 2020. SVREP provided water and a meal for those standing in line for hours waiting to vote because there were not enough voting sites for voters to cast their vote. In 2021, SVREP mobilized the same Latino voters with live contact for the U.S. Senate runoff elections. SVREP was not allowed to provide food and water to voters standing in line per Georgia State law, S.B.202.

California is among the states that have enacted and passed legislation that has protected the Latino vote. California provides for online voter registration; it has same-day voter registration as election day; potential voters can pre-register to vote as early as 16 years old; and automatic registration is allowed. All Californians registered to vote received their vote-by-mail ballot and can drop their ballots in drop boxes.

However, SVREP sued California over its redistricting maps. Hundreds of school districts and local municipalities conduct elections under at-large voting systems. This is true in some communities where the Latino community is the majority. The Latino community is disenfranchised when the at-large elections do not allow them to elect their candidates of choice.

I want to thank MALDEF for its excellent legal representation in our legal challenges against Texas and Arizona.

President Lyndon B. Johnson signed the Voting Rights Act of 1965 into law, and President Gerald Ford signed H.R. 6219, Extending the Voting Rights Act of 1965, in August 1975 to include language. It is time for Congress to sign legislation to protect America's democracy, ensure that the Voting Rights Act is able to fully protect the voting rights of American citizens, and honor the right to vote.

Thank you again, Chair Durbin, Ranking Member Graham, and members of the US Senate Judiciary Committee, for the opportunity to testify before the US Senate Judiciary Committee. SVREP urges the enactment of the John Lewis Voting Rights Advancement Act.

SVREP stands ready to work with the US Senate Judiciary Committee, the U.S. Congress, MALDEF, and civil and voting rights groups to enact the John Lewis Voting Rights Advancement Act.

¡Su Voto Es Su Voz!

Footnotes:

¹SVREP is one of ten nonprofit organizations that sued Texas on the premise that Texas violates the US Constitution and violates the Voting Rights Act with the redistricting maps it drew in 2021. SVREP won its legal lawsuit against the State of Texas in its lawsuit in 2011 on the redistricting case.

SVREP and eight other groups sued in the San Antonio Federal Court against the 2021 congressional and State House maps. The San Antonio Federal Court ruling fixed congressional district 23 and created two new districts, CD33 and C35, as Latino-majority districts where Latinos can elect candidates of choice.

LULAC v Abbott is pending litigation.

²SVREP sued Texas on the S.B. 1.

SB1 imposes new ID requirements on elderly and disabled mail voters, prevents election officials from reigning in partisan poll watchers, limits community-based voter outreach, and makes it difficult for voters to use the "assister" of their choice. Assisters aid language-limited voters, voters with visually impaired eyesight, and voters who need help.

³SVREP sued Texas for its efforts to purge 100,000 Latino voters in 2019, and we won a settlement.

⁴SVREP and other groups sued Texas on its Texas redistricting maps at the congressional and State House levels in 2011. The lawsuit asks the federal court to toss out the new maps because the maps are unconstitutional and violate Section 2 of the Voting Rights Act of 1965.

SVREP won and was able to fix the retrogressed congressional district 23 and draw two new congressional districts, CD33 and CD35. The San Antonio Federal Court drew interim maps for the elections because of Section 5 of the Voting Rights Act.

The Texas Latino Redistricting Task Force (Task Force) is a coalition of Latino organizations that sued Texas for its violation of the Voting Rights Act. These groups include

SVREP sued Texas in the U.S. District Court for the Western District of Texas, El Paso.

⁵SVREP sued Arizona to block H.B.2243 from being enacted into law.

⁶In 2006, SVREP sued Arizona on its request to require proof of citizenship, Proposition 200.



**STATEMENT OF DAMON T. HEWITT
PRESIDENT AND EXECUTIVE DIRECTOR
LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW**

U.S. SENATE JUDICIARY COMMITTEE HEARING:

“The Right Side of History: Protecting Voting Rights in America”

MARCH 12, 2024

I. Introduction

Chair Durbin, Ranking Member Graham, and Members of the Judiciary Committee of the U.S. Senate, my name is Damon T. Hewitt, and I am the President and Executive Director of the Lawyers' Committee for Civil Rights Under Law ("Lawyers' Committee"). Thank you for the opportunity to testify today on the need to protect voting rights in America by restoring the Voting Rights Act.

The Lawyers' Committee uses legal advocacy to achieve racial justice, fighting inside and outside the courts to ensure that Black people and other people of color have voice, opportunity, and power to make the promises of our democracy real. We litigate cases on behalf of voters who are traditionally disenfranchised or face the fiercest voter suppression tactics. The Lawyers' Committee also convenes the nation's largest nonpartisan voter protection effort, the Election Protection coalition, through we coordinate a suite of voter assistance hotlines, including 866-OUR-VOTE, which our organization administers. The Election Protection Coalition works year-round with almost four hundred national, state, and community partner organizations to provide Americans from coast to coast with comprehensive voting information and resources.

Our work enables us to see firsthand the barriers that voters currently face, along with the challenges that those who defend the right to vote take on, over ten years after the Supreme Court's decision in *Shelby County v. Holder*.

As the late Congressman John Lewis said, "Voting is the most powerful, non-violent tool we have to create a more perfect union."¹ And as President Lyndon Baines Johnson said upon urging Congress to pass the Voting Rights Act, "there can and should be no argument: every American citizen must have an equal right to vote."²

No eligible person of voting-age, particularly historically disenfranchised Black voters, should be confronted with barriers designed to make it more difficult for them to register to vote or to cast a ballot. Nor should we be limited to "participating in an empty ritual" in which the ballots we cast are rejected or rendered meaningless by discriminatory procedures or redistricting practices.³ Moreover, we should not be subject to court decisions that systematically neuter the reach of longstanding civil rights laws. But somehow it has come to all of this. The reality is that with each successive election cycle our democracy is increasing danger.

¹ John Lewis, *The March for Civil Rights*, NAT'L CONST. CTR. (Sept. 17, 2013), <https://constitutioncenter.org/news-debate/americas-town-hall-programs/congressman-john-lewis-the-march-for-civil-rights>.

² Lyndon B. Johnson, *Transcript of the Johnson Address on Voting Rights to Joint Session of Congress*, NEW YORK TIMES (Mar. 16, 1965), <https://archive.nytimes.com/www.nytimes.com/books/98/04/12/specials/johnson-rightsadd.html>.

³ Martin Luther King, Jr., A TESTAMENT OF HOPE: THE ESSENTIAL WRITINGS AND SPEECHES 307 (2003).

It is no coincidence that so many of the attacks on our democracy have been bolstered by the failure of Congress to restore the full protections of the Voting Rights Act, even as the U.S. Supreme Court continues to hobble its reach and remedies. The Voting Rights Act was specifically enacted to increase registration and participation of Black voters, and to combat racial discrimination in voting.⁴ It has been over a decade since the *Shelby County* decision gutted the most important provision of the Voting Rights Act—the preclearance provision in Section 5 of the Act, which made it possible to stop discriminatory voting laws before they could be implemented in jurisdictions with a history of voting discrimination.⁵ As a result, the floodgates of voter suppression have been wide open, and the health of our democracy has deteriorated. Justice Ruth Bader Ginsburg’s famous dissent admonishing the majority decision in *Shelby County* seems more prophetic with each new wave of voter suppression laws “[t]hrowing out preclearance when it has worked and is continuing to work to stop discriminatory changes is like throwing away your umbrella in a rainstorm because you are not getting wet” seems more prophetic with each new wave of voter suppression laws.⁶ Senators, voters of color are feeling the storm.

My testimony explains how we went from being protected by the umbrella of the Voting Rights Act’s preclearance regime to being drenched by wave after wave of suppressive actions by state legislatures and courts around the country. It examines the impact of the Supreme Court decisions in *Shelby County*, *Brnovich v. DNC*, and other cases, that have systematically cut back the scope and legal protections of the Voting Rights Act. It details a range of state laws that suppress the voices of voters of color, made possible by the gutting of Section 5. And it speaks to the steady drip of new challenges our litigators face in defending the right to vote in the courts, and the headwinds voters must face when casting a ballot, as seen by our Election Protection staff and our partners on the ground.

But we are also called to recognize an opening in the clouds where we see one. In *Shelby County*, the Court acknowledged that racial discrimination in voting continues to exist and invited Congress to act. That invitation can, and must, be accepted by Congress by passing legislation like the John R. Lewis Voting Rights Advancement Act.

In the decade-plus since *Shelby County*, Congress has been derelict in its duty to restore the law that transformed American democracy; a bill that an overwhelming bipartisan majority previously enthusiastically supported, reauthorized and strengthened multiple times. But now, states with a history of voting discrimination are no longer subject to preclearance requirements and have become emboldened to

⁴ *The Senate Passes the Voting Rights Act*, U.S. SENATE (Aug. 4, 1965), https://www.senate.gov/artandhistory/history/minute/Senate_Passes_Voting_Rights_Act.htm.

⁵ *Shelby Cnty., Ala. v. Holder*, 570 U.S. 529 (2013).

⁶ *Shelby Cnty., Ala. v. Holder*, 570 U.S. 529, 590 (2013) (Ginsburg, J., dissenting).

devise new methods to make it harder for voters of color to vote.⁷ And courts from the U.S. Supreme Court to federal district courts have been whittling away at the remaining provisions of the VRA.

As Congress considers new legislation to protect voting rights, it is important to reflect on why the VRA was passed in the first place. States with large numbers of people of color continuously passed laws that created barriers to voting, targeting Black voters with surgical precision. The burgeoning power of voters of color is exactly why some states sought to purposefully and selectively winnow the electorate. At times they tried to justify these laws under the guise of election integrity and efficiency of election administration. But their discriminatory intent and effects were plain as day.

History is now repeating itself. Once more, as the proportion of Black voters and other voters of color has increased in key states, we have seen targeted voter suppression laws reemerge as a means to silence our voices and curtail our power. Because voters of color often have disproportionately less resources than other voters,⁸ and sometimes exhibit small but significant differences in voting behaviors and preferences,⁹ tailored changes can be critical. Rather than the blanket denial of the right to vote through Jim Crow laws and physical force, like we saw before the Civil Rights Era, modern-day voter suppression tactics are often packages of dozens of less obvious restrictions that separately or together amount to substantial disenfranchisement. Today, the door to the voting booth is not physically barred or marred by violence; but it does lie in a maze, stuffed with individual trap-door restrictions of various types. Collectively, these obstacles have a devastating impact that are as discriminatory as they are anti-democratic. Our nation can and should do better.

In 1965 when it first passed the VRA, Congress realized that it had to act. It realized that it was untenable to have a country in which some citizens could vote freely and others could not. Now, given the record of renewed voting discrimination in the last decade, Congress must act again, channeling that same sense of moral clarity.

⁷ *Voting Laws Roundup: February 2023*, BRENNAN CTR. JUST. (Feb. 27, 2023), https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-february-2023?ms=gad_voter%20registration%20laws_605077783423_8626214133_137566775723&gclid=CjwKCAjwrrpOiBhBVEiwA_473dHdkJ1Wnw1OgwW3Ew8YUfHncOj6FuMqLML6cTQrt1MPujgU38Hc2_xoC3TEQAvD_BwE.

⁸ Neil Bhutta et al., *Disparities in Wealth by Race and Ethnicity in the 2019 Survey of Consumer Finances*, FEDERAL RESERVE (Sept. 28, 2020), <https://www.federalreserve.gov/econres/notes/feds-notes/disparities-in-wealth-by-race-and-ethnicity-in-the-2019-survey-of-consumer-finances-20200928.html>.

⁹ Geoffrey Skelley, *A Record Number Of Black Americans Could Vote Early This Year*, FIVETHIRTYEIGHT (Sept. 21, 2020), <https://fivethirtyeight.com/features/a-record-number-of-black-americans-could-vote-early-this-year/>.

II. Impact Of Recent Supreme Court Decisions

Fifty-nine years ago, in March 1965, President Lyndon Johnson responded to the protestors who crossed the Edmund Pettis bridge to march from Selma to Montgomery by introducing the Voting Rights Act. Less than six months later, Congress passed the legislation that transformed American Democracy. The law includes two significant provisions, Section 2 and Section 5. Section 2 is the general provision that allows the Department of Justice and private parties to challenge voting discrimination nationwide.¹⁰ Section 5 requires jurisdictions with a history of discrimination in voting, based on a formula under Section 4(b) of the law, to submit all voting changes for federal review by the Department of Justice or the District Court in the District of Columbia before they could be implemented.¹¹ From 1965 to the time that the U.S. Supreme Court, in *Shelby County*, nullified Section 5 by finding its governing formula unconstitutional, thousands of discriminatory voting changes were never put into effect.¹²

Before the *Shelby County* decision Sections 2 and 5 worked together to both prevent and remedy voting discrimination. However, in 2013, when it struck down the formula governing Section 5, the Court noted that Section 2 was an effective tool to remedy voting discrimination.¹³ But events since the *Shelby County* decision illustrate what a blow that decision has been to preventing voting discrimination.

Jurisdictions covered by Section 5 had to make the case that a voting change did not have a discriminatory purpose or effect. The provision against discriminatory purpose is the same as that of the Fourteenth and Fifteenth Amendment prohibitions against voting discrimination of voters of color.¹⁴ Effect is defined as retrogression -- a change that would diminish the ability of voters of color (often referred to in case law as "minority voters") to vote or to elect their preferred candidate of choice.¹⁵ The Section 5 review process was very effective in preventing voting discrimination and did so in an efficient manner that was transparent and provided covered jurisdictions the opportunity to make the case that their voting change was not discriminatory. As determined by the 2014 National Commission on Voting Rights, from 1965 to 2013, the Department of Justice issued approximately 1,000 determination letters denying preclearance of over 3,000 voting changes. These included objections to over 500

¹⁰ 52 U.S.C. § 10301

¹¹ 52 U.S.C. §§ 10303(b), 10304

¹² *Protecting Minority Voters: Our Work Is Not Done, A Report by the National Commission on Voting Rights*, Lawyers' Committee for Civil Rights Under Law 56 (June 2014),

<https://www.lawyerscommittee.org/wp-content/uploads/2023/06/2014-National-Commission-on-Voting-Rights-Report-Convened-by-Lawyers-Committee.pdf>.

¹³ *Shelby County*, 570 U.S. at 557.

¹⁴ 52 U.S.C. §10304(c)

¹⁵ 52 U.S.C. § 10304(b), (d)

redistricting plans and nearly 800 election method changes.¹⁶ Each objection benefited tens of thousands, hundreds of thousands or millions of voters depending on the voting change denied preclearance.

Section 5 also had a deterrent effect because jurisdictions subject to the provision knew they had to show that voting changes were not discriminatory. An operative Section 5 also allowed for notice and transparency. Because covered jurisdictions had to submit their voting changes for review, affected communities were aware of the changes and could weigh in on the impact that voting changes would have on their community. Overall, Section 5 not only made affected voters of color aware of the changes that could affect their ability to vote free from discrimination, it stopped those discriminatory voting changes from going into effect. And, by stopping discriminatory voting changes from going into effect, Section 5 prevented states from passing laws that would make it harder for voters to cast a ballot than their white counterparts.

The *Shelby County* decision not only neutered Section 5 of the Voting Rights Act, but it also emboldened those jurisdictions previously subject to federal review that immediately began to pass suppressive legislation targeting voters of color. These efforts will be discussed further below.

However, *Shelby County* is not the only Supreme Court decision that has weakened the Voting Rights Act. In 2021, the Supreme Court further weakened the Voting Rights Act in *Brnovich v. DNC* by making it harder to challenge voting discrimination under Section 2.¹⁷ The Supreme Court changed the standard for bringing litigation to challenge vote denial in a case that challenged Arizona's voting laws that did not allow out-of-precinct voting and limited who could collect absentee ballots. The Court established new, narrow and nebulous "guideposts" that plaintiffs must show to successfully establish a Section 2 vote denial violation.¹⁸

Many of the "guideposts" are novel and have little to do with analyzing the actual racial impact of challenged laws and policies. One of these problematic guideposts is that courts use voting practices in use in 1982 as a point of reference for the legitimacy of challenged practices today. Another warns against the so-called exaggeration of "small" differences in impact of a law or policy on voters of color, without an understanding that even "small" percentage differences can translate into tens of thousands of voters of color unlawfully losing their right to vote.¹⁹

¹⁶ *Protecting Minority Voters: Our Work Is Not Done, A Report by the National Commission on Voting Rights*, Lawyers' Committee for Civil Rights Under Law 56 (June 2014), <https://www.lawyerscommittee.org/wp-content/uploads/2023/06/2014-National-Commission-on-Voting-Rights-Report-Convened-by-Lawyers-Committee.pdf>.

¹⁷ 141 S. Ct. 2321 (2021)

¹⁸ *Id.* at 2336.

¹⁹ *Id.* at 2338–40.

The requirement that courts look back to 1982 does not make any sense because today's world is different from the world in 1982. Yet, under *Brnovich*, if a state saw a significant shift in the methods that Black voters were using to vote between 2018, 2020, and 2022 and then changed its laws to prevent those voters from using their preferred method of voting, this “guidepost”—if read literally—would favor upholding that law. *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 that result in the abridgement of the right to vote based on race or color.

The attack on the Voting Rights Act has continued even in Supreme Court decisions that found a violation under Section 2. In his concurring opinion, Justice Kavanaugh noted “... the authority to conduct race-based redistricting cannot extend indefinitely into the future.”²⁰ He also added that however Alabama did not raise such an argument.²¹ States such as Georgia have seized on what it sees as an invitation to raise this argument in litigation challenging the state's redistricting as discriminatory.²² Although we maintain that the argument that Section 2 is subject to some sort of amorphous stopwatch is frivolous, the attack on the Voting Rights Act continues and Congress must act to preserve it and to restore its full protections, lest this iconic legislation that transformed American Democracy become a shell at the time that states continue to pass suppressive legislation.

III. Examples of Post-Shelby Legislation in Texas, Georgia and Florida

In the wake of the *Shelby County* decision and, subsequently, in reaction to repeated false claims that the 2020 presidential election was stolen as a result of massive voter fraud and other baseless assertion, Texas, Georgia and Florida, among other states, enacted suppressive voting legislation targeting Black voters and other voters of color and methods of voting which have increasingly been used by Black voters as well as other voters of color.

Some of the more egregious examples are summarized below, but do not include all the efforts by State legislators to roll back the clock on voting rights in the aftermath of the gutting of preclearance under Section 5 of the Voting Rights Act.

²⁰ *Milligan*, 599 U.S. at 45.

²¹ *Id.*

²² See Brief of the State of Georgia, *Alpha Phi Alpha Fraternity, Inc. et al. v. Sec. of State of Georgia*, p. 64 No. 23-13914 (Feb. 7, 2024).

a. TEXAS

1. TX SB 14 (2011)²³

Within hours after the Supreme Court handed down its decision in *Shelby County*,²⁴ gutting Section 5 of the Voting Rights Act and its preclearance requirement, Texas took action to implement Senate Bill 14 (“SB 14”), a restrictive voter ID law. The law had been on hold because neither the DOJ nor the District Court for the District of Columbia had precleared the law under Section 5 of the Voting Rights Act because of its discriminatory effect on Black and Latinx voters.²⁵

After the State began its efforts to implement SB 14 following the *Shelby County* decision, the Lawyers’ Committee, other civil rights organizations, and the Department of Justice, filed litigation under Section 2 of the Voting Rights Act in the United States District Court for the Southern District of Texas and those litigations were later consolidated by the District Court.²⁶

This legal challenge was ultimately successful in the District Court, with the Court finding, among other things, that the law had an “impermissible discriminatory effect against Hispanic and Black voters and was imposed with an unconstitutional discriminatory purpose. Not satisfied with the outcome in the District Court, the State filed an appeal in the Fifth Circuit, which affirmed the discriminatory result ruling of the District Court, and remanded the finding of purposeful discrimination back to the District Court. Subsequently, the District Court granted a motion by the United States to dismiss its discriminatory purpose claim after Texas changed the challenged voter ID law. Although the District Court found in favor of the individual and organizational plaintiffs’ discriminatory intent claim upon remand and entered a permanent injunction in their favor, the Fifth Circuit reversed, concluding that those plaintiffs’ claims were moot as a result of the state subsequent enactment of the new voter ID law.

²³ S.B. 14, 82nd Leg., Reg. Sess. (Tex. 2011).

²⁴ *Shelby Cnty., Ala. v. Holder*, 570 U.S. 529 (2013).

²⁵ *Texas v. Holder*, 888 F. Supp. 2d 113 (D.D.C. 2012), *vacated and remanded*, 570 U.S. 928 (2013).

²⁶ *Veasey v. Perry*, 71 F. Supp. 3d 627 (S.D. Tex. 2014), *aff’d in part, vacated in part, remanded sub nom. Veasey v. Abbott*, 796 F.3d 487 (5th Cir. 2015), *on reh’g en banc*, 830 F.3d 216 (5th Cir. 2016), and *aff’d in part, vacated in part, rev’d in part sub nom. Veasey v. Abbott*, 830 F.3d 216 (5th Cir. 2016); *cert. denied*, *Abbott v. Veasey*, 580 U.S. 1104 (2017); *order on remand, granting United States’ motion for voluntary dismissal of its discriminatory purpose claim under § 2 of the VRA. Veasey v. Abbott*, 248 F. Supp. 3d 833 (S.D. Tex. 2017); *order on remand finding that individuals and advocacy groups established state’s racially discriminatory intent or purpose of in enacting the voter ID law, in violation of § 2 of VRA., Veasey v. Abbott*, 249 F. Supp. 3d 868 (S.D. Tex. 2017); *reversing as moot the permanent injunction in favor of individual and advocacy group plaintiffs*, 888 F.3d 792, *Veasey v. Abbott*, 888 F.3d 792 (5th Cir. 2018).

Undeterred by the successful legal challenge to SB 14, Texas subsequently continued to enact discriminatory voting laws in the absence of the enforcement of the preclearance provisions of Section 5 of the Voting Rights Act as described below.

2. TX SB 1 (2021)²⁷

In the wake of the 2020 general election and unfounded claims of widespread “voter fraud,” Texas enacted another omnibus voter suppression bill, TX SB 1 in 2021, following in the footsteps of other states, such as Georgia and Florida, which sought to roll back voting methods and procedures which were increasingly being used by Black voters and other voters of color following the 2020 election.

Although the purported purpose of SB 1 was to detect and punish fraud, Keith Ingram, the Director of Elections within the Texas Secretary of State’s office, testified during a Texas legislative hearing in March 2021 in reference to the 2020 election held in the midst of the COVID pandemic, that “in spite of all the circumstances, Texas had an election that was smooth and secure,” and further that “Texans can be justifiably proud of the hard work and creativity shown by local county elections officials.”²⁸

Nevertheless, TX SB 1 included new restrictions on providing assistance to voters with limited English proficiency or physical disabilities at the polls; new restrictions on early voting; a ban on absentee ballot drop boxes and drive-thru voting; new requirements for the acceptance of mail-in ballot applications; and provisions expanding the power of partisan poll watchers, which increases the potential for harassment of voters and poll workers by partisans in the polling place.

The Lawyers’ Committee and other civil rights groups filed litigations in Texas state and federal courts challenging provisions of SB 1, including five lawsuits which were consolidated by the U.S. District Court for the Western District in Texas in which DOJ filed a Statement of Interest on behalf of the United States²⁹ as well as a separate litigation filed in the District Court of Harris County, 198th Judicial District,

²⁷ S.B. 1, 87th Leg., Reg. Sess. (Tex. 2021).

²⁸ Taylor Goldenstein, Jeremy Blackman, *Did a ‘smooth and secure’ 2020 Election cost the Texas Secretary of State her job?*, Houston Chronicle (May 24, 2021), <https://www.houstonchronicle.com/politics/texas/article/Texas-Secretary-of-State-Ruth-Hughes-resigns-under-16195586.php>.

²⁹ See Order Consolidating *OCA-Greater Houston v. Esparza*, No. 1:21-cv-780 (W.D. Tex.); *Houston Justice v. Abbott*, No. 5:21-cv-848 (W.D. Tex.); *LULAC Texas v. Esparza*, No. 1:21-cv-786 (W.D. Tex.) and *Mi Familia Vota v. Abbott*, No. 5:21-cv-920 into *La Unión del Pueblo Entero v. Abbott*, U.S. Dist. W.D. TX, No. 5:21-cv-844-XR, ECF Doc. 31 (W.D. Tex. 9/30/2021); Statement of Interest of the United States Regarding Section 208 Of The Voting Rights Act, 5:21-cv-00844-XR, ECF Doc. 641 (W.D. TX 06/23/23)

by the Lawyers' Committee on behalf of the Texas State Conference of the NAACP, Common Cause Texas and several individual plaintiffs.³⁰

In 2022, after Texas enacted SB 1 in 2021, OCA-Greater Houston, one of the plaintiffs in the subsequent consolidated actions challenging SB 1, obtained an order modifying a previously entered permanent injunction to enjoin certain provisions of SB 1 which were in conflict with the earlier injunction and gave notice of the order to the Court in the consolidated actions challenging SB 1. The District Court in the consolidated actions subsequently dismissed the plaintiffs' claims to the extent that that they were mooted because of the modified injunction entered in the earlier action brought by OCA-Houston.³¹

Subsequently, in August 2023, the U.S. District Court for the Western District of Texas also struck down certain provisions of SB 1 which violated the Civil Rights Act of 1964 because they require officials to reject mail-in ballot applications and mail-in ballots based upon errors or omissions that are not material in determining whether voters are qualified under Texas law to vote or cast a mail ballot.³²

A trial on the merits of the *La Union del Pueblo Entero v. Abbott*, litigation began in the Fall of 2023 and ended in February 2024. The parties are awaiting a decision by the District Court.

2. TX SB 924 (2023)³³

Texas SB 924 was enacted in 2023 and allows for the consolidation of polling locations which are used for a general or special election in which county precincts are required, with the approval of county commissioners, courts, or County election boards, in counties with populations under 1.2 million persons.

The law effectively raises the cap on the number of voters assigned to a single precinct from 5,000 to 10,000 registered voters, creating the likelihood of long lines and delays at the polls. The law also burdens Black voters, seniors, and physically

³⁰ Plaintiffs' Original Petition *Texas State Conference of the NAACP, et al., v. Greg Abbott, et al.*, 2021 WL 4066318 (Tex. 189th Judicial Dist., September 7, 2021)

³¹ *O.C.A. Greater Houston, et al, v, State of Texas*, U.S. District Court for the Western District of Texas, Case No. 1:15-CV-679-RP, 2022 WL 2019295 (W.D. Tex. June 6, 2022)(*Order granting in part and denying in part plaintiff's motion for modification of permanent injunction*); *La Union del Pueblo Entero v. Abbott*, U.S. District Court for the Western District of Texas, 5:21-cv-844-XR; ECF Doc. 438 (W.D. TX 6/14/22)(Plaintiffs' notice of Modified Permanent Injunction Regarding Sections 61.032, 61.033, And 64.0321 Of The Texas Election Code); *La Union del Pueblo Entero v. Abbott*, 5:21-cv-844-XR; ECF Doc. 444 (W.D. TX 7/12/22)(Order on mootness).

³² *La Union del Pueblo Entero v. Abbott*, U.S. District Court for the Western District of Texas, 5:21-cv-844-XR, Summary Ruling on Section 101 Materiality Claims and Order on Pretrial Filings, ECF Doc. 724 (Aug. 17, 2023).

³³ S.B. 924, 88th Leg., Reg. Sess. (Tex. 2023); *88(R) History for SB 924*, Texas Legislature Online, <https://capitol.texas.gov/BillLookup/history.aspx?LegSess=88R&Bill=SB924>.

disabled voters with limited economic recourses who lack access to a personal vehicle and must use public transit or walk long distances to a polling location to cast their ballots.

3. TX SB 1933 (2023)³⁴ and TX SB 1750 (2023)³⁵

In 2023, Texas also enacted two bills, SB 1933 and SB 1750, which specifically targeted Harris County’s administration of elections. Harris County has the largest and most diverse population in the state. The laws allow the Texas Secretary of State’s Office to take over the administration of Harris County’s elections, and to conduct unprecedented oversight of Harris County’s elections officials. Although Harris County filed a lawsuit in state court challenging TX SB 1730, the Texas Supreme Court upheld the law and the County dismissed its litigation challenging the law as a result of the Texas Supreme Court’s ruling.

b. GEORGIA

1. SB 202 (2021)³⁶

On March 25, 2021, the Georgia General Assembly passed SB 202³⁷ and Georgia’s Governor, Brian Kemp, signed SB 202 into law the same day.³⁸ SB 202, an omnibus voter suppression bill, was enacted on the heels of the 2020 general election and the proliferation of false claims by former President Donald J. Trump, his campaign, and allies that the election was stolen and the product of wide-scale voter fraud, particularly in Fulton County, which has a large Black voter population.³⁹

SB 202 contains provisions which make it significantly harder for Black voters to cast absentee ballots that will count. These absentee ballot ID requirements include a mandate that voters include a Georgia Driver’s license number or Georgia State ID number on their absentee ballot application and, if they have neither, voters are required to copy another form of acceptable voter ID and attach the copies of ID documents along with other identifying information to both their absentee ballot applications and inside the absentee ballot envelope when returning the voted ballot.

³⁴ S.B. 1933, 88th Leg., Reg. Sess. (Tex. 2023); *88(R) History for SB 1933*, Texas Legislature Online, <https://capitol.texas.gov/BillLookup/history.aspx?LegSess=88R&Bill=SB1933>.

³⁵ S.B. 1750, 88th Leg., Reg. Sess. (Tex. 2023); *88(R) History for SB 1750*, Texas Legislature Online, <https://capitol.texas.gov/BillLookup/history.aspx?LegSess=88R&Bill=SB1750>.

³⁶ S.B. 202, 156th Gen. Assemb., Reg Sess. (Ga. 2021).

³⁷ *Id.*

³⁸ *SB 202 Legislative History*, Georgia General Assembly, <https://www.legis.ga.gov/legislation/59827> (last visited Mar. 8, 2024).

³⁹ Nick Corasaniti, *Georgia G.O.P. Passes Major Law to Limit Voting Amid Nationwide Push*, New York Times (Mar. 25, 2021, updated Apr. 3, 2021), <https://www.nytimes.com/2021/03/25/us/politics/georgia-voting-law-republicans.html>.

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. It also makes the process of returning an absentee ballot application via the Secretary of State's electronic absentee ballot portal or by electronic submission to their county election offices more challenging because the Secretary of State has required voters to digitize their absentee ballot application forms with their "wet" signature applied to it in order to submit it electronically to the Secretary of State's office through the portal or to their county election offices.

Additionally, SB 202 criminalizes the "handling" of a completed absentee ballot application except by election officials, law enforcement officer, or a person assisting a disabled voter who signs an oath on the form that they provided assistance to 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 to Black voters and other voters of color, particularly such voters residing in the Metro Atlanta counties which serve the state's largest populations of Georgia's Black voters and other voters of color. While all Georgia counties are required to have at least one drop box, counties are only permitted to have one additional drop box for every 100,000 active registered 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. As a result of this law, these counties will have fewer drop box locations available for their voters than in the 2020 election.

Moreover, SB 202 requires drop boxes to be available only during the dates and times of early in-person voting and all absentee ballot drop boxes must be located inside early voting locations and only available to be used by voters during the days and hours of early in-person voting. The option to use a drop box ends on the Friday prior to an election rather than at the end of voting at 7:00 p.m. on Election Day, as was permitted prior to SB 202. Thus, drop boxes are now essentially useless to voters who can vote early in-person at an early voting location or who cannot access early in-person voting during the limited hours and time frame in which drop boxes are available.

SB 202 also allows the State Election Board to take over county election boards, which would give the State Election Board, comprised of unelected members, unprecedented power to target jurisdictions with a large populations of Black voters for harassing investigations and control over election administration.

Perceived higher turnout by voters of color likely prompted SB 202. After the results of the Georgia senate races in early 2021, a Gwinnett County elections official in suburban Atlanta – a county in which people of color have been a growing proportion of the electorate – argued for voter restrictions saying, “They don’t have to change all of them, but they have got to change the major parts of them so we at least have a shot at winning.”⁴⁰

In the absence of preclearance under Section 5 of the Voting Rights Act, any legal challenges to suppressive voting legislation in Georgia must proceed in federal or state courts, which require significant resources to be expended in the litigation of such claims under Section 2 of the Voting Rights Act or in challenges brought under the U.S. Constitution.

In fact, multiple litigations were filed in the immediate aftermath of the enactment of SB 202 in 2021 and this litigation is still ongoing.

In the course of the litigation, the District Court entered orders granting preliminary injunctions enjoining two provisions of SB 202: 1) the criminalization of “line relief,” i.e., the provision of food and water to voters waiting in long lines to vote outside of the 150-foot electioneering boundary immediately outside of a poll, which the District Court determined likely violated the First Amendment;⁴¹ and 2) enjoining SB 202’s requirement that voters include their full and accurate date of birth on their absentee ballot return envelope or face rejection of their absentee ballots, determining that this provision likely violated the materiality provision of the Civil Rights Act of 1964.⁴² The state defendants and Republican Party intervenors have appealed both of those orders to the Eleventh Circuit Court of Appeals.

Had the preclearance provision of Section 5 of the Voting Rights Act not been gutted by the *Shelby County* decision, it appears likely that neither DOJ nor the DC District court would have precleared SB 202 because of its discriminatory effect on Black voters and other voters of color in Georgia.

Since the enactment of SB 202 in 2021, the Georgia legislature has repeatedly tried to move forward with more legislation which would make it more difficult for

⁴⁰ Michael Wines, *After Record Turnout, Republicans are Trying to Make it Harder to Vote*, N.Y. TIMES (Mar. 26, 2021), <https://www.nytimes.com/2021/01/30/us/republicans-voting-georgia-arizona.html>.

⁴¹ See, *In re SB 202*, ECF Document No. 614, Order Granting in Part and Denying in Part Motion for a Preliminary Injunction enjoining Keith Gammage, Gregory W. Edwards and all named defendants in cases 1:21-cv-01284 and 1:21-cv-01259 from enforcing the Penalty Provision, initiating criminal prosecutions or otherwise imposing criminal penalties for violations of the Food, Drink and Gift Ban in the Supplemental Zone.

⁴² See, *In re SB 202*, ECF Document No. 613, Order Granting in Part and Denying in Part Motion for a Preliminary Injunction Based on Immaterial Voting Requirements.

Black voters and other voters of color to exercise their right to vote and to have their votes count.

Some of these examples include:

1) The enactment of Georgia SB 441 in 2022, which authorizes the Georgia Bureau of Investigation to launch probes of election law fraud or other violations which could undermine the outcome of an election.⁴³ The bill also gives the bureau the authority to subpoena election records with signoff from the state's attorney general.⁴⁴

2) The introduction of Georgia House Resolution 780, which seeks to amend the Georgia Constitution to include a ban on noncitizen voting in Georgia, despite the fact that the Georgia Constitution already limits the franchise to persons who are citizens of the United States and residents of Georgia.⁴⁵ The resolution is supported by Secretary of State, Brad Raffensperger, but has been stalled in the House having not received the required two-thirds majority vote which is needed to place a constitutional amendment referendum on the ballot.⁴⁶

3) The introduction of four bills focused upon changes to ballots and ballot counts.⁴⁷

4) The introduction of SB 446, a bill which seeks to substantially reduce early voting, which is very popular in the state.⁴⁸

5) The introduction of SB 221, a bill which would end automatic voter registration despite evidence that it helps to ensure the accuracy of the Georgia voter registration rolls.⁴⁹

⁴³ S.B. 441, 156th Gen. Assemb., Reg. Sess. (Ga. 2021).

⁴⁴ *Id.*; see also: Kelly Mena, *Georgia passes bill giving state law enforcement agency power to investigate elections*, CNN (Apr. 5, 2022), <https://www.cnn.com/2022/04/05/politics/georgia-passes-election-investigation/index.html>.

⁴⁵ Georgia Constitution, GA CONST Art. 2, §1, ¶ II.

⁴⁶ Stanley Dunlap, *Bill to ban noncitizens from voting in Georgia elections stalls at key legislative deadline*, WABE (Mar. 1, 2024), <https://www.wabe.org/bill-to-ban-noncitizens-from-voting-in-georgia-elections-stalls-at-key-legislative-deadline/>.

⁴⁷ Dave Williams, *Four Georgia bills focus on changes to election ballots, counts*, The Current (Feb. 3, 2024), <https://thecurrentga.org/2024/02/03/four-georgia-bills-focus-on-changes-to-election-ballots-counts/>.

⁴⁸ S.B. 446, 157th Gen. Assemb., Reg. Sess. (Ga. 2024); Doug Richards, *Georgia senate bill would shorten early voting period*, 11 Alive News (Feb. 2, 2024), <https://www.11alive.com/article/news/politics/ga-senate-bill-shorten-early-voting-period/85-0c815ef0-27c3-4efa-813a-1527fc2adfa5>.

⁴⁹ S.B. 221, 157th Gen. Assemb., Reg. Sess. (Ga. 2024); Jeff Amy, *Georgia Republicans seek to stop automatic voter registration in state*, Assoc. Press (Feb. 22, 2024), <https://www.pbs.org/newshour/politics/georgia-republicans-seek-to-stop-automatic-voter-registration-in-state>.

6) The introduction of SB 355, which would prohibit ranked choice voting in Georgia beyond that which is offered to military or overseas voters.⁵⁰

7) Beginning in 2021, so-called, “local bills,” were enacted to reconstitute county boards of election in order to remove Black Democrats who were previously appointed to serve as election board members as a result of a prior bi-partisan appointment process and replacing them with persons appointed by Republican County commissioners or other Republican leadership in the counties.⁵¹

C. FLORIDA

1. FL SB 90 (2021)⁵²

Florida enacted its post-2020 election omnibus voter suppression law, FL SB 90, purportedly to address the State’s concerns about election integrity notwithstanding that there was little to no evidence of massive voter fraud or other problems with the integrity of Florida’s elections at the time SB 90 was enacted.⁵³

Nevertheless, SB 90 made numerous changes to Florida elections procedures, including making it more difficult to register to vote; restricting the ability to provide food and water to voters waiting in line to vote; imposing new restrictions on the provision of assistance to disabled or illiterate voters and to voters with limited English proficiency if they needed assistance in voting at the polls; making it more difficult to vote absentee; shortening the time frame in which voters can remain on the state’s automatic vote by mail list; and making it more difficult to use absentee ballot drop boxes, among other changes.⁵⁴

The law also made changes to rules governing poll observers, which opened the door to the prospect that observers could intimidate both voters and election administrators at the polls, and the law made it more difficult for Florida agencies to settle election-related litigation without interference by the legislature or attorney general.⁵⁵

⁵⁰ S.B. 355, 157th Gen. Assemb., Reg. Sess. (Ga. 2024)

⁵¹ James Oliphant and Nathan Layne, *Insight: Georgia Republicans purge Black Democrats from county election boards*, Reuters (Dec. 9, 2021), <https://www.reuters.com/world/us/georgia-republicans-purge-black-democrats-county-election-boards-2021-12-09/>; Nick Corasaniti and Reid J. Epstein, *How Republican States Are Expanding Their Power Over Elections*, New York Times (June 19, 2021), <https://www.nytimes.com/2021/06/19/us/politics/republican-states.html>.

⁵² S.B. 90, 2021 Leg., Reg. Sess. (Fla. 2021)

⁵³ Eliza Sweren-Becker, *Florida Enacts Sweeping Voter Suppression Law*, Brennan Ctr. Just. (Apr. 30, 2021, updated May 6, 2021), <https://www.brennancenter.org/our-work/analysis-opinion/florida-enacts-sweeping-voter-suppression-law>.

⁵⁴ *Id.*

⁵⁵ *Id.*

Soon after the enactment of SB 90, civil rights and voter advocacy organizations filed lawsuits challenging the law under theories which included violations of the First, Fourteenth and Fifteenth Amendments of the U.S. Constitution, the Americans with Disabilities Act and the Voting Rights Act. The cases were subsequently consolidated for trial by the District Court.⁵⁶

Following a bench trial before the Honorable Chief Judge Mark Walker, the Court entered a lengthy opinion striking down most of the suppressive and discriminatory aspects of the law.⁵⁷ Despite the District Court's having made detailed findings of fact supporting the opinion which highlighted evidence at trial which demonstrated the law was enacted with discriminatory purpose and had a discriminatory effect on Black voters, the Eleventh Circuit reversed much of Judge Walker's opinion and remanded the case to the District Court with specific instructions to determine whether the drop box restrictions and voter registration delivery provisions unduly burden the right to vote under the First and Fourteenth Amendments.

Subsequently, the Eleventh Circuit denied a petition for rehearing *en banc* and on February 8, 2024, and the District Court rejected the plaintiffs' remaining claims on remand, effectively ending the litigation.⁵⁸

2. FL SB 524 (2022)⁵⁹

Florida Senate Bill 524 was enacted in 2022 in the wake of unfounded claims of mass voter fraud in the 2020 election. This bill created an Office of Election Crimes and Security within the Department of State which was effectively an election police force.

When the election police were first deployed to make arrests in August 2022 following the enactment of SB 524, the election police force conducted 20 arrests in August of 2022, which demonstrated a clearly disproportionate impact on Black Florida voters when 15 of the 20 persons arrested were Black, even though Black

⁵⁶ See, *League of Women Voters of Florida, et al. v. Laurel M. Lee, et al.*, Case No. 4:21-cv-00186-MW-MAF, United States District Court for the Northern District of Florida, ECF Document 365 (Dec. 8, 2021).

⁵⁷ *League of Women Voters of Fla., Inc. v. Lee*, 595 F. Supp. 3d 1042 (N.D. Fla. 2022), *aff'd in part, vacated in part, rev'd in part sub nom. League of Women Voters of Fla. Inc. v. Fla. Sec. of State*, 66 F.4th 905 (11th Cir. 2023).

⁵⁸ *League of Women Voters of Fla. Inc. v. Fla. Sec. of State*, 81 F.4th 1328 (11th Cir. 2023)(denying the petition for *en banc* review); and *League of Women Voters of Fla., Inc. v. Fla. Sec. of State*, No. 4:21CV186-MW/MAF, 2024 WL 495257 (N.D. Fla. Feb. 8, 2024)(final order denying the plaintiffs' remaining claims on remand).

⁵⁹ S.B. 524, 2022 Leg., Reg. Sess. (Fla. 2022).

voters only comprised 14.5 percent of the state’s population in the 2020 Census.⁶⁰ This significant racial disparity as well as the failure of the election police to secure convictions raised red flags about the racially disproportionate impact of the law as well as whether it was necessary or even effective.⁶¹

3. FL SB 7050 (2023)⁶²

Florida enacted SB 7050 in 2023, which is another omnibus voter suppression law. SB 7050 took aim at third party voter registration groups, targeted mail-in ballots and absentee voting; and amended Florida’s list maintenance provisions, among other voting changes.⁶³

Soon after the enactment of SB 7050, civil rights groups and voting advocates, including the Florida State Conference of Branches and Youth Units of the NAACP; League of Women Voters of Florida, and the Hispanic Federation, filed lawsuits challenging its provisions.⁶⁴

On July 3, 2023, the Court in the *Hispanic Federation* litigation temporarily enjoined the provision of S.B. 7050 which bars persons who are not U.S. citizens from engaging in voter registration activities. On July 11, the Florida Secretary of State and Attorney General filed an appeal from this decision in the 11th Circuit.

On March 1, 2024, the District Court granted, in part, the plaintiffs’ motion in the *Hispanic Federation, et al.* action for summary judgment and permanently blocked the Florida Secretary of State from enforcing a provision of S.B. 7050 which bars persons who are not United States citizens from collecting or handling voter registration applications on behalf of third-party voter registration groups, finding that the provision violates the Equal Protection Clause of the 14th Amendment.

With respect to the League of Women Voter’s challenge to SB 7050, which is also consolidated with the Florida State Conference of Branches and Youth Units of

⁶⁰ Sergio Bustos, *Crist decries voting-fraud arrests after body cam video shows voters shocked by felony charges*, Tallahassee Democrat (Oct. 20, 2022), <https://www.tallahassee.com/story/news/politics/elections/2022/10/19/charlie-crist-ron-desantis-voting-fraud-arrests-police-body-camera-florida/10539631002/>.

⁶¹ 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>.

⁶² S.B. 7050, 2023 Leg., Reg. Sess. (Fla. 2023).

⁶³ *Id.*

⁶⁴ The three lawsuits are: *Hispanic Federation, et al. v. Cord Byrd, et al.*, United States District Court for the Northern District of Florida, Case No. 4:23-cv-218 RH-MAF (filed May 23, 2023); *Florida State Conference of Branches and Youth Units of the NAACP v. Cord Byrd, et al.*, United States District Court for the Northern District of Florida, Case No. 4:23-cv-218-MW/MAF (filed May 24, 2023); and *League of Women Voters of Florida v. Moody*, United States District Court for the Northern District of Florida, 4:23-cv-00216-RH-MAF (filed May 24, 2023).

the NAACP action, the Court granted summary judgment to the Defendants on the League’s challenge to the “Felon Ban” provisions of SB 7050, which prohibit persons with certain disqualifying felony convictions from handling or collecting absentee ballots and imposes significant fines on organizations allowing such persons to collect or handle absentee ballots.⁶⁵ All three actions are still being litigated in the District Court as of the time of this summary.

IV. Litigation Challenges in Addressing Suppressive Laws

The Lawyers’ Committee works on the front lines of the legal fight to defend and expand equal and meaningful access to our democracy for communities of color. We see the effects of the judicial subversion of key provisions of the Voting Rights Act every day. This is not a theoretical exercise: courts are narrowly construing the reach of the provisions of the Voting Rights Act every day in ways that directly impact the ability of voters of color to participate in our elections on an equal basis with white voters.

As outlined above, the *Shelby County* and *Brnovich* decisions have opened the floodgates for states to pass new voting restrictions which target and disproportionately disenfranchise voters of color. But these decisions have not only emboldened anti-voter lawmakers to enact discriminatory voting laws. These decisions have also emboldened lower court judges to issue rulings that further dismantle the remaining protections of the Voting Rights Act, in particular Section 2, and that undermine the practical ability of voting rights litigators to effectively bring and win cases enforcing these protections. This has in turn emboldened defendants in these cases to advance novel and baseless arguments attacking the very foundations of Section 2.

Most prominently, in *Milligan*, decided last year, Alabama defended its discriminatory congressional redistricting plan—which created just one Black opportunity district out of seven total districts despite Black Alabamians making up more than one quarter of the state’s population—in part by arguing that the decades-old *Gingles* framework used by courts to evaluate whether a redistricting plan violates Section 2 requires jurisdictions to engage in constitutionally impermissible “race-based redistricting” and must be thrown out and replaced with an analysis comparing the challenged map to a “race-neutral benchmark.”⁶⁶ While the Court declined to endorse such a radical remaking of Section 2 jurisprudence, it did so in a narrow 5-4 ruling, with — as noted above — a concurrence issued by Justice Kavanaugh suggesting his willingness to strike down Section 2 entirely or apply it in

⁶⁵ *League of Women Voters of Florida, Inc., et al. v. Cord Byrd, et al.*, Case No. 4:23-cv-216-MW/MAF, ECF Document No. 95 (Feb. 13, 2024).

⁶⁶ 599 U.S. 1, 23 (2023).

a “race-neutral” manner that would severely undermine its protections.⁶⁷ While Alabama did not initially raise this argument in *Milligan*, they later referenced it as they openly defied a lower court order to draw a second Black opportunity district,⁶⁸ and defendants have begun raising it in other cases and it will likely be before the Court in the near future.

Just as concerning, the Eight Circuit Court of Appeals in November of last year took the unprecedented step of ruling that Section 2 is not even enforceable by private plaintiffs. In *Arkansas State Conf. NAACP v. Arkansas Bd. of Apportionment*, the court affirmed in a 2-1 decision the district court’s ruling—issued by a recently-appointed judge who had served as Arkansas Solicitor General a mere five years prior⁶⁹—finding that only the Attorney General can bring cases enforcing the protections of Section 2.⁷⁰ Ignoring nearly six decades of rulings in hundreds of cases—including by the United States Supreme Court⁷¹—uniformly endorsing without question the ability of affected individuals to bring suit to enforce their rights under Section 2, the court instead engaged in a spurious and contorted legal analysis misapplying and cherry-picking canons of statutory construction in a thinly-veiled exercise of ends-means justification.⁷² This decision prevented these plaintiffs from continuing their lawsuit challenging Arkansas’ discriminatory redistricting plan for its state House of Representatives—which packed Black voters, who make up sixteen percent of the state’s population, into just eleven percent of the House districts. Although we maintain that Section 1983 of the Civil Rights Act provides an alternative means for private persons and individuals to press claims under Section 2 of the Voting Rights Act, this ruling curtailing private rights of action under Section 2 currently applies to the Eighth Circuit, which covers states with total population over twenty million people. Further, in the few short months since this ruling,

⁶⁷ *Id.* at 45 (Kavanaugh, J., concurring in part) (“Justice THOMAS notes, however, that even if Congress in 1982 could constitutionally authorize race-based redistricting under § 2 for some period of time, the authority to conduct race-based redistricting cannot extend indefinitely into the future.”).

⁶⁸ See, e.g., Jemma Stephenson, “Alabama Attorney General’s Office says state is not defying redistricting court order,” *Alabama Reflector* (Sept. 22, 2023), available at <https://alabamareflector.com/2023/09/22/alabama-attorney-generals-office-reply-says-theyre-not-defying-redistricting-court-order/>.

⁶⁹ Hon. Lee P. Rudofsky was confirmed by the United States Senate in 2019 on a party-line vote after the Senate lowered the maximum time allowed for debate on district court nominees from thirty hours to just two hours. See *Lee Rudofsky*, Ballotpedia, https://ballotpedia.org/Lee_Rudofsky (last visited Mar. 8, 2024).

⁷⁰ 86 F.4th 1204 (8th Cir. 2023).

⁷¹ See, e.g., *Shelby Cty., Ala. v. Holder*, 570 U.S. 529, 537 (2013) (“Both the Federal Government and individuals have sued to enforce § 2...”); See also *Morse v. Republican Party, Va.*, 517 U.S. 186, 240 (1996) (“Although [Section] 2, like [Section] 5, provides no right to sue on its face, ‘the existence of the private right of action under Section 2... has been clearly intended by Congress since 1965’”).

⁷² See generally, Brief for the Lawyers’ Committee as Amicus Curiae, *Arkansas State Conf. NAACP v. Arkansas Bd. of Apportionment*, 86 F.4th 1204 (8th Cir. 2023) (Apr. 2022), <https://www.lawyerscommittee.org/wp-content/uploads/2022/04/Corrected-Amicus-Brief-of-Lawyers-Comm-in-Support-of-Arkansas-NAACP-No.-22-1395-paper-copies.pdf>.

defendants in numerous other Section 2 lawsuits across the country have begun asserting this same baseless argument.

Since *Brnovich* imposed its novel and unfounded set of “guideposts” for courts to consider when evaluating Section 2 vote denial claims, courts applying them have felt forced to ignore statistically significant racially disparate impact. In a recent decision out of Arizona, the court applied these guideposts in evaluating whether new restrictive voter registration provisions—including requiring voters who do not provide documentary proof of citizenship (“DPOC”) when registering to vote to be subject to investigation by county recorders—violate Section 2 of the Voting Rights Act. Despite finding that voters of color are *twice as likely as white voters* to register without providing DPOC and thereby be subjected to investigation, and that this was burdensome both in intimidating voters and in potentially requiring an eligible voter to take additional steps to confirm their citizenship, the court found that under the *Brnovich* framework this two-to-one racially disparate impact did not affect enough voters overall to violate Section 2.⁷³

And courts are undermining enforcement of the Voting Rights Act in more subtle ways as well. Multiple circuit courts have begun issuing rulings preventing plaintiffs who bring intentional discrimination claims under Section 2 from obtaining the very evidence of impermissible legislative intent that would help prove these claims. For example, the Fifth Circuit ruled last year that documents evidencing the circumstances surrounding the proposal and passage of Texas SB 1—an omnibus voter suppression bill plaintiffs allege was designed to restrict access by voters of color—were shielded from discovery by legislative privilege, and that the legislators had not waived this privilege despite communicating this same information with third parties outside the legislature.⁷⁴ Similarly, in another Eighth Circuit decision issued last year, the court held that legislative privilege shielded North Dakota legislators from having to testify and turn over key evidence concerning the circumstances surrounding their enactment of a discriminatory redistricting plan, including legislators’ communications regarding Tribal input into the redistricting process, the identity of the map drawers and the criteria they followed in drawing the map, and racial polarization or demographic data considered during the redistricting process.⁷⁵

Even where plaintiffs are able to demonstrate a violation, or that they have a high likelihood of demonstrating a violation, courts are increasingly content to allow elections to take place under a discriminatory redistricting plan or other restriction

⁷³ *Mi Familia Vota v. Fontes*, No. CV-22-00509-PHX-SRB, 2024 WL 862406, at *44-47 (D. Ariz. Feb. 29, 2024).

⁷⁴ *La Union Del Pueblo Entero v. Abbott*, 68 F.4th 228, 236 (5th Cir. 2023).

⁷⁵ *In re N. Dakota Legislative Assembly*, 70 F.4th 460, 465 (8th Cir. 2023) (granting petition for writ of mandamus to quash subpoenas from *Turtle Mountain Band of Chippewa Indians v. Jaeger*, No. 3:22-0022 (D.N.D.); *id.* at fn.*).

on access to voting before ordering that the violation be remedied. Known as the *Purcell* Principle after *Purcell v. Gonzalez*,⁷⁶ what was once a general principle that courts should carefully examine and balance the “harms attendant upon issuance or non-issuance of an injunction,” together with “considerations specific to election cases” that bear against changing voting laws on the eve of an election,⁷⁷ has been applied as acting as a practical bar to judicial intervention even months before an election.⁷⁸ For example, earlier in the *Milligan* case, the Supreme Court stayed the district court’s preliminary injunction ordering Alabama to draw a second Black opportunity district, citing *Purcell* despite the primary election still being more than four months away.⁷⁹ A district court judge in Georgia subsequently cited this stay in declining to enjoin state legislative and congressional maps it found likely violated Section 2.⁸⁰ As a result, both Alabama and Georgia held their 2022 elections on discriminatory maps despite plaintiffs showing they were likely to prevail in establishing a Section 2 violation.

The threats to equal access to democracy for voters of color are ever-present and show no signs of diminishing. At the same time, courts are steadily undermining the legal tools available to voters of color facing discriminatory voting laws, in particular Section 2 of the Voting Rights Act. Congress must act to restore the key protections of the Voting Rights Act and ensure that it remains viable as a legal defense against voter suppression in perpetuity.

V. Conclusion

The record since the *Shelby County* decision demonstrates what voting rights advocates feared: that without an operational Section 5, voting discrimination would increase substantially. To help remedy suppressive state laws targeting voters of color, new litigation challenges in protecting the right to vote, and the firsthand barriers which voters of color face, the most important thing Congress can do is to pass the John Lewis Voting Rights Advancement Act (JLVRAA) to restore the strength of the VRA and prevent racial discrimination. Without legislation like the JLVRAA addressing the hole in the Voting Rights Act left by the *Shelby County* and other decisions, our democracy is at risk. The JLVRAA responds to the Supreme Court decisions weakening the VRA with provisions that strengthen the Voting Rights Act to address the discriminatory voting laws that voters of color increasingly face today.

⁷⁶ 549 U.S. 1 (2006) (per curiam).

⁷⁷ *Id.* at 4-5.

⁷⁸ *See, e.g., Thompson v. Dewine*, 959 F.3d 804, 813 (6th Cir. 2020) (invoking *Purcell* in granting stay of lower court order in part on basis that, while “[t]he November election itself may be months away,” “important, interim deadlines . . . are imminent” more than five months prior to Election Day).

⁷⁹ *Merrill v. Milligan*, 142 S. Ct. 879, 879-82 (2022).

⁸⁰ *Alpha Phi Alpha Fraternity Inc. v. Raffensperger*, 587 F. Supp. 3d 1222, 1326 (N.D. Ga. 2022).



WRITTEN STATEMENT OF
SOPHIA LIN LAKIN
DIRECTOR, VOTING RIGHTS PROJECT
AMERICAN CIVIL LIBERTIES UNION

For a Hearing on

The Right Side of History: Protecting Voting Rights in America

Submitted to the U.S. Senate Committee on the Judiciary

Hearing on March 12, 2024

Submitted on March 11, 2024

Introduction

Chairman Durbin, Ranking Member Graham, and members of the Committee, thank you for the opportunity to testify before you regarding the pressing need for the restored and strengthened voting rights protections in the John R. Lewis Voting Rights Advancement Act.

The ACLU Voting Rights Project was established in 1965—the same year that the historic Voting Rights Act (“VRA”) was enacted—and has litigated more than 400 cases since. Its mission is to build and defend an accessible, inclusive, and equitable democracy free from racial discrimination. The Voting Rights Project has filed or intervened in more than 30 lawsuits to protect voters since the 2020 election, including on behalf of Black, Latine, Asian, Indigenous communities, and voters with disabilities. That includes several recent cases that have reached the Supreme Court, including a redistricting challenge under Section 2 of the VRA in *Allen v. Milligan*¹ (successfully enjoining Alabama’s congressional plan that diluted Black voters’ electoral strength), and a racial gerrymandering lawsuit in *Alexander v. South Carolina NAACP*² (challenging South Carolina’s congressional plan adopted in 2022). It also includes two Supreme Court cases challenging the last administration’s discriminatory census policies: *Department of Commerce v. New York*³ (successfully challenging an attempt to add a citizenship question to the 2020 Census), and *Trump v. New York*⁴ (challenging the exclusion of undocumented immigrants from the population count used to apportion the House of Representatives). And it includes challenges to voter purges and documentary proof of citizenship laws, and to other new legislation restricting voting rights in states like Florida, Georgia, Mississippi, Ohio, and Texas

In my capacity as Director of the ACLU Voting Rights Project, I lead the planning, strategy, and supervision of the ACLU’s voting rights litigation nationwide, which focuses on ensuring that all Americans have access to the franchise, and that everyone is equally represented in our political processes. I also serve as litigation counsel on many of the Project’s cases. I am currently litigating or have litigated numerous cases challenging racially discriminatory laws under Section 2 of the Voting Rights Act, including *Alpha Phi Alpha Fraternity Inc. v. Raffensperger*,⁵ a redistricting challenge to Georgia’s state legislative maps for unlawfully diluting Black voters’ voting strength; *NAACP v. Arkansas Board of Apportionment*,⁶ another redistricting case challenging Arkansas’s state house legislative district map for diminishing Black voters’ voting power; *Sixth District of the African Methodist Episcopal Church v. Kemp*,⁷ a challenge to Georgia’s sweeping voter suppression law enacted in the wake of the 2020 elections; *Texas v. Crystal Mason*,⁸ the representation on appeal of Ms. Mason who was

¹ 599 U.S. 1 (2023).

² No. 3:21-cv-03302-MGL-TJH-RMG (D. S.C. filed Oct. 12, 2021). The Supreme Court heard oral argument in this case on October 11, 2023. A decision remains pending.

³ 139 S. Ct. 2551 (2019).

⁴ 141 S. Ct. 530 (2020).

⁵ No. 1:21-cv-05337-SCJ (N.D. Ga. filed Dec. 30, 2021).

⁶ No. 4:21-cv-01239-LPR (E.D. Ark. filed Dec. 29, 2021).

⁷ No. 1:21-cv-01284-JPB (N.D. Ga. filed Mar. 29, 2021).

⁸ No. 02-18-00138-CR (Tex. App.—Fort Worth 2018).

convicted and sentenced to 5-years' imprisonment for submitting a provisional ballot that was never counted even though she did not know she was ineligible to vote; *MOVE Texas v. Whitley*,⁹ a challenge to a discriminatory purge program in Texas; *Missouri State Conference of the NAACP v. Ferguson-Florissant School District*,¹⁰ a challenge to the discriminatory at-large method of electing school board members; *Frank v. Walker*,¹¹ a challenge to Wisconsin's voter ID law; and *North Carolina State Conference of the NAACP v. McCrory*,¹² a challenge to North Carolina's omnibus voter suppression law passed in the immediate aftermath of *Shelby County v. Holder*.¹³

More than a century ago, the Supreme Court famously described the right to vote as the one right that is preservative of all others.¹⁴ As Chief Justice John Roberts has explained, "[t]here is no right more basic in our democracy than the right to participate in electing our political leaders."¹⁵ Unfortunately, our nation has a long and well-documented record of fencing out certain voters—Black voters and other voters of color, in particular—and today that racial discrimination in voting remains a persistent and widespread problem.

The landmark Voting Rights Act ("VRA"), one of the signature achievements of the Civil Rights Movement, has been critical in the efforts to combat this enduring blight. Passed initially in 1965, and reauthorized and amended with bipartisan support in 1970, 1975, 1982, 1992, and 2006,¹⁶ it is one of the most effective pieces of federal civil rights legislation ever enacted. But nearly eleven years ago, in *Shelby County v. Holder*,¹⁷ the Supreme Court struck down the formula used to determine which jurisdictions were covered by a federal preclearance regime. This meant that the heart of the VRA—the requirement that jurisdictions with a long record of voter suppression submit proposed changes to election laws to federal officials *before* they went into effect—functionally ended.

My written statement will discuss the ACLU's experience with ongoing and intensifying attacks on voting access, particularly for voters of colors, in the wake of the Supreme Court's 2013 decision in *Shelby County v. Holder*, and describe some of the reasons why the

⁹ No. 5:19-cv-00171 (W.D. Tex. filed Feb. 22, 2019).

¹⁰ 894 F.3d 924 (8th Cir. 2018).

¹¹ 768 F.3d 744 (7th Cir. 2014).

¹² 831 F.3d 204 (4th Cir. 2016) ("*N.C. NAACP v. McCrory*").

¹³ 570 U.S. 529 (2013).

¹⁴ *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886).

¹⁵ *McCutcheon v. Fed. Election Comm'n*, 572 U.S. 185, 191 (2014); see also *Reynolds v. Sims*, 377 U.S. 533, 555 (1964) ("The right to vote freely for the candidate of one's choice is of the essence of a democratic society, and any restrictions on that right strike at the heart of representative government.").

¹⁶ See Voting Rights Act of 1965, Pub. L. No. 89-110, 79 Stat. 437; Voting Rights Act Amendments of 1970, Pub. L. No. 91-285, 84 Stat. 315; Voting Rights Act Amendments of 1975, Pub. L. No. 94-73, 89 Stat. 400; Voting Rights Act Amendments, Pub. L. No. 97-205, 96 Stat. 131 (1982); Voting Rights Language Assistance Act of 1992, Pub. L. No. 102-344, 106 Stat. 921; Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006, Pub. L. No. 109-246, 120 Stat. 577, as amended, 52 U.S.C. § 10301 *et seq.*

¹⁷ 570 U.S. 529 (2013).

preclearance requirement is essential to protect voting rights, particularly in light of the Supreme Court’s 2019 decision in *Brnovich v. Democratic National Committee*, which made it harder for plaintiffs suing under the VRA to meet their burden of proof.

The *Shelby County* decision changed the landscape of voting rights in the United States.¹⁸ Under the VRA, states and counties with the worst histories and records of voting discrimination had to obtain federal “preclearance”—that is, approval from the Department of Justice or a federal court—before implementing any changes to voting laws and practices, to ensure they did not make minority voters worse off. *Shelby County* struck down the formula used to identify which states were required to do so, gutting the heart of the Act. In her dissent in that case, the late Justice Ruth Bader Ginsburg warned that the Court’s decision was “like throwing away your umbrella in a rainstorm.”¹⁹ After the decision, the rainstorm became a downpour.

Shelby County unleashed torrent of voter suppression and other discriminatory voting laws unlike anything the country had seen in decades.²⁰ Previously covered jurisdictions like Texas and North Carolina swiftly enacted discriminatory restrictions that were either previously blocked or would have been readily blocked under preclearance. And then in 2021, in the wake of historic turnout in the 2020 election cycle—despite the COVID-19 pandemic, dangerous rhetoric, and a false narrative of voter fraud surrounding the 2020 presidential election—legislators launched an unprecedented wave of attacks on voting rights. In many instances they targeted the very methods that voters of color used to turn out in record numbers during the pandemic. That relentless assault continues.

Since *Shelby County*, the main protection the VRA affords against this torrent of anti-voter measures is Section 2 of the statute. Section 2 bans the use of any “voting qualification or prerequisite to voting . . . which results in a denial of abridgment of the right of any citizen of the United States to vote on account of race or color.”²¹ It applies nationwide, to all jurisdictions. In the districting context, it requires proof that minority voters face—unlike their majority peers—

¹⁸ This written statement incorporates my prior written testimony before the House Judiciary Committee, Constitution, Civil Rights, and Civil Liberties Subcommittee submitted on August 14, 2021, and June 27, 2021. I am also indebted to my ACLU colleagues who contributed to the preparation of this statement, in particular Dayton Campbell-Harris, Davin Rosborough, Victoria Ochoa, Adriel I. Cepeda Derieux, Molly McGrath, and Xavier Persad who provided invaluable support.

¹⁹ 570 U.S. at 590 (Ginsberg, J., dissenting).

²⁰ See Dale E. Ho, *Building an Umbrella in A Rainstorm: The New Vote Denial Litigation Since Shelby County*, 127 Yale L.J. Forum 799 (2018); *Block the Vote: Voter Suppression in 2020*, ACLU (Feb. 3, 2020), <https://www.aclu.org/news/civil-liberties/block-the-vote-voter-suppression-in-2020>. This wave has not receded: According to the Brennan Center for Justice’s analysis as of May 14, 2021, state lawmakers introduced at least 389 restrictive voting bills in 48 states—more than 4 times, the number of restrictive bills introduced two years ago—and at least 14 states enacted 22 new laws that restrict access to the vote—putting this legislative cycle on track to far exceed the current record. *Voting Laws Roundup: May 2021*, Brennan Center for Justice (May 28, 2021), <https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-may-2021.work/research-reports/voting-laws-roundup-may-2021>.

²¹ 52 U.S.C. § 10301.

bloc voting along racial lines, arising against the backdrop of substantial racial discrimination within the State, that renders a minority vote unequal to a vote by a nonminority voter.”²²

Section 2 litigation is expensive, complex, and time-consuming, even compared to the baseline expenses and time of litigation. And because a Section 2 challenge can only be brought *after* a law has been passed or a policy implemented, multiple elections involving hundreds of elected officials can take place while the case is being litigated under regimes that courts later find are racially discriminatory. This is an irrevocable taint on our democracy that we have, unfortunately, seen play out in vivid terms in formerly covered jurisdictions like Alabama, Georgia, North Carolina, and Texas, thanks to the *Shelby County* decision. Stronger protections for voting rights are therefore necessary to prevent voting discrimination.

The Supreme Court in *Shelby County* based its ruling in part on the assumption that voting rights plaintiffs would still be able to obtain preliminary or emergency relief in voting rights cases before an imminent election.²³ But the theoretical availability of preliminary relief has also proven inadequate. The current standard for obtaining a preliminary injunction makes it difficult for plaintiffs to win relief in Section 2 cases. This problem has only worsened due to the expansion, at the Supreme Court’s direction, of the so-called “*Purcell* principle,” *i.e.*, the idea that courts should be cautious in issuing orders which change election rules in the period right before an election. That idea has metastasized from a commonsense warning to, effectively, a bright-line rule against changing voting laws or districts within even a few months of Election Day.²⁴ All too frequently, this rule stymies voting rights advocates’ efforts to ensure that voters are protected, and that discriminatory laws and practices are blocked *before* they can taint an election.

The Supreme Court has also weakened Section 2’s strength as a tool to combat the assault on voting rights. Since *Shelby County*, the Court has chipped away further at Section 2’s protections, especially as it relates to laws that abridge or deny the right to vote based on race through restricting the time, place, and manner of voting (vote abridgement/denial cases), most notably in *Brnovich v. Democratic National Committee*. The 2021 *Brnovich* decision made two broad changes to Section 2 challenges against election administration regulations. First, it raised the bar plaintiffs must meet to satisfy their burden for a successful Section 2 claim. Second, the Court lowered the threshold governments must meet for an election administration law to survive a Section 2 challenge. These two changes together made Section 2 challenges to election administration laws more difficult, in defiance of both congressional intent and Section 2’s text.

The VRA’s framers understood that Section 2, a nationwide tool to bring cases one-by-one, could not bear the weight it now does. That is why the preclearance regime was enacted and remained in place with bipartisan support for decades. And it is why the stronger voting rights

²² *Allen v. Milligan*, 599 U.S. 1, 25 (2023).

²³ See *Shelby Cty. v. Holder*, 570 U.S. 529, 537 (2013) (remarking that under Section 2, “injunctive relief is available in appropriate cases to block voting laws from going into effect”).

²⁴ See Richard L. Hasen, *Reining in the Purcell Principle*, 43 Fla. St. U. L. Rev. 427, 428 (2017).

protections in the John R. Lewis Voting Rights Advancement Act of 2024 (“VRAA”),²⁵ including a new preclearance regime, are critical.

Just last week, on the 59th Anniversary of Bloody Sunday, we honored the late John Lewis and the civil rights and demonstrators in Selma, Alabama, who put their lives on the line—or even died—to secure the right to vote. It was their courage, sacrifice, and determination that pushed Congress to pass the Voting Rights Act. Then—as now—Congress had the power and responsibility under the Fourteenth and Fifteenth Amendments to adopt strong enforcement legislation to prevent racial discrimination in the voting process at the federal, state, and local levels. Indeed, when Congress acts to address racial discrimination in voting—protecting both the fundamental right to vote and the right to be free from racial discrimination, two rights at the center of the Reconstruction Amendments—it does so at the height of its power.²⁶ Today, this body has not only the authority but the duty to ensure that all Americans are free to exercise the franchise in elections without the taint of racial discrimination.

I. The Assault on Voting Rights is Ongoing and Intensifying.

When the Supreme Court nullified the preclearance formula in 2013, it released the worst vote-suppressing offenders from federal oversight amidst a growing backlash against increased minority voter participation. These states and others took *Shelby County* as a signal that they could enact voting restrictions that disproportionately harmed voters of color with impunity—and they moved swiftly to do so. The same day *Shelby County* came down, Texas officials announced they would implement restrictive voter ID laws that a federal court had previously blocked under Section 5.²⁷ Less than two months later, North Carolina passed an omnibus voting bill that a federal court later found “target[ed] African Americans with almost surgical precision.”²⁸ Alabama and Mississippi, which had passed similar ID laws previously blocked under preclearance, began enforcing these laws within a year.²⁹

Ultimately, *Shelby County* opened the floodgates to levels of voting discrimination unlike anything the country had seen in a generation. States and localities unleashed a squall of burdensome and discriminatory voting restrictions including strict photo ID requirements, restraints on voter registration, overbroad voter purges, cuts to early voting, restrictions on the

²⁵ John R. Lewis Voting Rights Advancement Act of 2024, S.4263, 118th Cong. (2024).

²⁶ See *Tennessee v. Lane*, 541 U.S. 509, 563 (2004) (Scalia, J., dissenting) (“Broad interpretation [of Congress’ power] [i]s particularly appropriate with regard to racial discrimination, since that was the principal evil against which the Equal Protection Clause was directed”); *Kimel v. Fla. Bd. of Regents*, 528 U.S. 62, 81 (2000). (“Congress’ power ‘to enforce’ the Amendment includes the authority both to remedy and to deter violation of rights guaranteed thereunder by prohibiting a somewhat broader swath of conduct, including that which is not itself forbidden by the Amendment’s text.”).

²⁷ *Veasey v. Abbott*, 830 F.3d 216, 227 & n.7 (5th Cir. 2016) (en banc) (quoting *League of Women Voters of N.C. v. North Carolina*, 769 F.3d 224, 240 (4th Cir. 2014), cert. denied, 135 S. Ct. 1735 (2015)); see also *Ohio State Conf. for the NAACP v. Husted*, 786 F.3d 524, 554 (6th Cir. 2014).

²⁸ *N.C. State Conf. of NAACP v. McCrory*, 831 F.3d 204, 214 (4th Cir. 2016).

²⁹ Caroline Cournoyer, *Mississippi’s Voter ID Law Debuts During Primary*, *Governing* (June 2, 2014), <https://www.governing.com/news/headlines/voter-id-law-debuts-during-mississippi-primary.html>; Kim Chandler, *Alabama photo voter ID law to be used in 2014, state officials say*, *Al.com* (June 25, 2013), https://www.al.com/wire/2013/06/alabama_photo_voter_id_law_to.html.

casting and counting of absentee and provisional ballots, documentary proof of citizenship requirements, polling place closures and consolidations, and criminalization of acts associated with voter registration or voting.³⁰

These attacks also reflect a familiar pattern of backlash to record voter turnout by voters of color. In part due to public health and safety accommodations implemented in response to the COVID-19 pandemic, which allowed more voters than ever before to cast a ballot by mail, voter turnout surged in the 2020 elections.³¹ Asian-American and Latine voter turnout rose dramatically to historic highs, while Black voter turnout rebounded from a dip in 2016.³² In many places, voters of color used absentee and mail voting at much higher rates than before.³³ In Georgia, for example, the 2018 and 2020 elections saw Black, Latine, and Asian American voters exceed the rates of absentee ballot usage of white voters,³⁴ and voters played key roles in the outcome of the presidential race not only in Georgia but also in Arizona, Georgia, and Pennsylvania, and the two run-off elections for U.S. Senate in Georgia in January 2021.³⁵

Unfortunately, in the wake of this historic turnout—which spanned political parties and demographic groups—and the dangerous rhetoric, violence, and lies surrounding the 2020 presidential election, legislators responded by launching an all-out assault on the right to vote. They introduced more than 440 bills in nearly every state aimed at restricting access to the franchise, particularly in communities of color.³⁶ States like Georgia, Texas, and Florida—the former two previously subject to Section 5, and the latter covered in part—passed omnibus bills with a variety of restrictive policies. Those bills particularly targeted absentee and mail voting—the very voting methods that voters of color safely relied on in greater numbers in recent elections.³⁷ These policies range from strict absentee voter ID laws that disproportionately impact voters of color, mail voting restrictions, and limits voter assistance, among others.

³⁰ Appendix A to the ACLU's 2021 VRAA Report documents these events at length to the extent the ACLU provided direct representation or participated as amicus. See *The Case for Restoring and Updating the Voting Rights Act: A Report of the American Civil Liberties Union 2021*, https://www.aclu.org/wp-content/uploads/publications/aclu_2021_vra_report_-_combined.pdf.

³¹ See William H. Frey, *Turnout in 2020 Spiked Among Both Democratic and Republican Voting Groups, New Census Data Shows*, Brookings (May 5, 2021), <https://www.brookings.edu/research/turnout-in-2020-spiked-among-both-democratic-and-republican-voting-groups-new-census-data-shows/>.

³² *Record High Turnout in 2020 General Election*, U.S. Census Bureau, <https://www.census.gov/library/stories/2021/04/record-high-turnout-in-2020-general-election.html>

³³ *The Voting Experience in 2020*, Pew Research Center, <https://www.pewresearch.org/politics/2020/11/20/the-voting-experience-in-2020/>.

³⁴ Expert Report of Dr. Bernard L. Fraga at 23, *In re: Ga. Senate Bill 202*, No. 1:12-MI-55555-JPB (N.D. Ga.).

³⁵ See *id.*; Nate Cohn, *Why Warnock and Ossoff Won in Georgia*, N.Y. Times (Jan. 7, 2021), <https://www.nytimes.com/2021/01/07/upshot/warnock-ossoff-georgia-victories.html>.

³⁶ Brennan Center, *Voting Laws Roundup: December 2021*, <https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-december-2021?ref=readtangle.com>.

³⁷ For example, Florida and Texas passed laws requiring voters to provide a state ID number or the last four digits of a social security number to obtain a mail ballot. Georgia's law requires voters to provide a driver's license number, a state ID number, or a copy of acceptable voter ID.

The onslaught has not abated. In 2023, lawmakers introduced at least 356 anti-voter bills, and at least 14 states enacted 17 restrictive voting measures.³⁸ These new restrictions continue to focus on restricting mail voting or making it more difficult, including by requesting additional information or documents, shortening the window to request a mail-in ballot, and prohibiting or limiting the availability and accessibility of drop boxes. Other laws target individuals and organizations who help voters access the ballot. Mississippi, for example, enacted Senate Bill 2358, which blocks anyone—including a friend, neighbor, or volunteer from a voter service group—from helping a Mississippi voter submit their absentee ballot unless the assister is an election official, postal worker, family member, or caregiver (an undefined term in the law). In Florida, Senate Bill 7050 not only adds barriers to mail voting, it targets voter registration work by increasing penalties non-governmental voter registration organizations face for minor mistakes, mistakes and prohibiting like allowing noncitizens including long-time permanent residents from handling voter registration forms.³⁹ Civil penalties can run up to \$50,000 per offense, which is enough to put many of these voter registration organizations out of business.⁴⁰ Many of these organizations focus on serving predominately Hispanic communities that are less likely to be English proficient,⁴¹ and are disproportionately under-registered to vote compared to white Floridians.⁴² An attack on these voter registration organization is thus an attack on registering Hispanic Floridians.

At the same time, our Nation has become increasingly diverse. According to the 2020 Census, *all* of the population growth in this country over the last decade was due to growth in communities of color.⁴³ Today, the country has more racial and ethnic diversity 2010 and 2020, the Black population increased from 13.6% of the population to 14.2%, the Asian population increased from 5.6% to 7.2% in 2020, the Hispanic population increased from 16.3% to 18.7%, while the white population declined from 72.4% to 61.6%.⁴⁴ Of these populations, Hispanic and

³⁸ Brennan Center, Voting Laws Roundup: 2023 in Review, <https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-2023-review>.

³⁹ *Fla. State Conf. of Branches & Youth Units of the NAACP v. Byrd*, No. 4:23CV215-MW/MAF, 2023 WL 4311084, at *1-*2 (N.D. Fla. July 3, 2023).

⁴⁰ *Id.* at *8.

⁴¹ Pew Research Center, *Latinos make up 17% of Florida registered voters in 2020*, <https://www.pewresearch.org/short-reads/2020/10/19/latinos-make-up-record-17-of-florida-registered-voters-in-2020/>.

⁴² U.S. Census Bureau, *Voting and Registration in the Election of November 2022*, <https://www.census.gov/data/tables/time-series/demo/voting-and-registration/p20-586.html>.

⁴³ Brookings Institute, *New 2020 Census Results Show Increased Diversity Countering Decade-Long Declines in America's White and Youth Populations*, <https://www.brookings.edu/articles/new-2020-census-results-show-increased-diversity-countering-decade-long-declines-in-americas-white-and-youth-populations/#:~:text=This%20means%20that%20all%20of,as%20two%20or%20more%20races.&text=Together%20C%20these%20groups%20now%20comprise,40%25%20of%20the%20U.S.%20population>.

⁴⁴ U.S. Census Bureau, *Race and Ethnicity in the United States: 2010 Census and 2020 Census*, <https://www.census.gov/library/visualizations/interactive/race-and-ethnicity-in-the-united-state-2010-and-2020-census.html>.

Asian Americans are the fastest-growing racial and ethnic groups nationally, increasing by 23% and 35.6%, respectively, from 2010 to 2020.⁴⁵

Instead of embracing these changing demographics and working to create the inclusive multiracial democracy that the Reconstruction Amendments promise, some perceive the growing political strength of communities of color as an unwelcome threat to the status quo. Like high turnout and registration rates, the growth in population of a racial minority group frequently catalyzes attempts to limit and delay the growth in the political power that should accompany population growth in any democracy.⁴⁶

This past redistricting cycle—the first full cycle without the VRA’s preclearance protections—demonstrated this difficult reality in stark terms. At least six of the nine states that were previously required to submit district maps for preclearance now face lawsuits challenging their maps for racial discrimination⁴⁷ (Alabama, Georgia, Louisiana, Mississippi, South Carolina, and Texas). In many of these states, minority population growth and/or the state’s changing demographics *should* have translated to new political opportunities for racial minorities in the state’s district maps but did not. In the subset of these lawsuits that the ACLU is litigating, federal courts, including the U.S. Supreme Court in the case of Alabama, have found statewide maps in Alabama, Georgia, Louisiana, and South Carolina racially discriminatory.

- In Georgia, for example, 2020 census data showed tremendous growth in the state’s Black population over the last decade. Still, lawmakers in 2021 enacted legislative maps that created failed to provide equal for Black Georgians, especially in Metro Atlanta, where the Black population increased by hundreds of thousands, voting remained polarized by race, and racial discrimination continued to affect political participation opportunities.⁴⁸ Last October, the court held that the State’s legislative maps diluted the voting strength of Black Georgians in violation of the VRA and ordered Georgia to draw two new Black opportunity districts in the state Senate and five new Black opportunity districts in the state House.⁴⁹
- In Alabama, where white residents were the only demographic group to decline in population in both absolute and relative numbers from 2010 to 2020 and Black people and other people of color drove a disproportionate share of the state’s population growth over the last decade, state legislators in 2021 enacted a map with just one

⁴⁵ Brookings, *Mapping America’s diversity with the 2020 census*, <https://www.brookings.edu/articles/mapping-americas-diversity-with-the-2020-census/#:~:text=Latino%20or%20Hispanic%20and%20Asian%20Americans%20are%20the,further%20afield%20than%20the%20familiar%20large%20metro%20areas>.

⁴⁶ *Restoring the Voting Rights Act: Combating Discriminatory Abuses*: Hearing on H.R.4 before the Subcomm. on the Constitution of the S. Comm. on the Judiciary, 117th Cong.4 (2021) (Statement of Thomas A. Saenz, President and General Counsel, Mexican American Legal Defense and Education Fund).

⁴⁷ Alaska, another formerly covered jurisdiction, faced several partisan gerrymandering lawsuits this past redistricting cycle as well. See *Matter of the 2021 Redistricting Cases*, 528 P.3d 40 (2023).

⁴⁸ U.S. Census Bureau, *Georgia: 2020 Census*, <https://www.census.gov/library/stories/state-by-state/georgia-population-change-between-census-decade.html>.

⁴⁹ *Alpha Phi Alpha Fraternity Inc. v. Raffensperger*, No. 1:22-cv-00122-SCJ, 2023 WL 7037537 (N.D. Ga. Oct. 26, 2023). The case is currently on appeal.

majority-Black congressional district.⁵⁰ Black people are about 27% of Alabama’s population but were properly represented by just one of seven (14%) congressional districts.⁵¹ After a lengthy evidentiary hearing documenting how the map dilutes the voting strength of Black Alabamians, a three-judge federal court held—and the Supreme Court affirmed in its landmark ruling in *Allen v. Milligan*—that the state’s congressional map likely violates the VRA. As a result, for the first time in Alabama’s history, Black voters will have two congressional districts in which they have an equal opportunity to elect their candidates of choice in the upcoming 2024 election.

- Louisiana likewise passed maps at the state and congressional level that failed to reflect the growth of its Black population, even though the 2020 Census data showed that one-third of the state’s population is now Black.⁵² Despite that demographic shift, the legislature passed a congressional plan in which only one of Louisiana’s six districts was majority Black. After years of litigation, the district court and the Fifth Circuit Court of Appeals concluded that we were likely to succeed in showing that map violated the Voting Rights Act, and the legislature finally redrew the congressional plan to add an additional Black opportunity district this January.⁵³ And in February, following a seven-day trial, a federal district court found that the state legislative maps also diluted Black Louisianians’ votes in every corner of the state, and ordered the state to draw three additional Black opportunity districts in the state senate and six additional Black opportunity districts in the state house.⁵⁴
- Texas experienced similar growth, adding almost four million people between 2010 and 2020 that came almost entirely from people of color. The Hispanic population grew by 20.9% to 39.3% of the population, the Black population grew by 25.1% to 13.9% of the population, and the Asian population grew 66.5% to 6.3% of the population.⁵⁵ At the same time, Texas’s white population decreased by 17.5% over that same period. Despite these demographic shifts, Texas’s congressional and legislative maps passed in response to reapportionment fail to reflect these changes, adding two new majority-white districts and no new opportunity districts for voters of color. Several lawsuits were filed in Fall 2021 challenging these redistricting plans

⁵⁰ *Allen v. Milligan*, 599 U.S. 1, 16 (2023).

⁵¹ U.S. Census Bureau, Alabama: 2020 Census, <https://www.census.gov/library/stories/state-by-state/alabama-population-change-between-census-decade.html>.

⁵² U.S. Census Bureau, Louisiana: 2020 Census, <https://www.census.gov/library/stories/state-by-state/louisiana-population-change-between-census-decade.html>.

⁵³ *Robinson v. Ardoin*, 605 F. Supp. 759, 766 (M.D. La. 2022); *Robinson v. Ardoin*, 37 F.4th 208, 215 (5th Cir. 2022); *Robinson v. Ardoin*, 86 F.4th 574, 583 (5th Cir. 2023); Louisiana State Legislature, S.B. 8 (2024 First Extraordinary Session), <https://www.legis.la.gov/legis/BillInfo.aspx?i=245512>.

⁵⁴ *Nairne v. Ardoin*, No. 3:22-cv-178, 2024 WL 492688, at *30–32 & n.359, *44 (M.D. La. Feb. 8, 2024); *Nairne v. Ardoin*, No. 3:22-cv-178, ECF No. 234 at 4–7, 15 (appendix to ruling and order containing “separately enumerated findings of facts and conclusions of law”). The case is currently on appeal.

⁵⁵ U.S. Census Bureau, Texas: 2020 Census, <https://www.census.gov/library/stories/state-by-state/texas-population-change-between-census-decade.html>.

for violating the VRA and Fourteenth and Fifteenth Amendments.⁵⁶ Litigation remains ongoing.

- In North Dakota, the Spirit Lake Tribe and the Turtle Mountain Band of Chippewa challenged North Dakota's state legislative maps for unlawfully diluting the voting power of Native Americans in violation of the VRA.⁵⁷ In November 2023, a district court held the map violated Section 2.

The fight against the exclusion of voters of color from electoral opportunities is also being hard fought at the local level. In Dodge City, Kansas, for example, the Latine population grew dramatically over the last few decades. As of 2021, it comprises 65% of the city's total population and 46% of its citizen voting age population. Nevertheless, the Latine population is significantly underrepresented on the City Commission. The ACLU, along with partners at UCLA Voting Rights Project and Clearly Gottlieb, went to trial in late February 2024. There, we presented compelling evidence that because of racially polarized voting and past and present discrimination, the City's at-large method of election for City Commission prevents Latine voters from electing their candidates of choice.

These discriminatory voting laws and practices have prompted an explosion of litigation to protect voters from state and local officials' federal-law violations. Since *Shelby County*, the ACLU has filed or intervened in nearly 100 new cases, and we currently have more than 35 active matters. We have sued all nine of the formerly covered jurisdictions (Alabama, Alaska, Arizona, Georgia, Louisiana, Mississippi, South Carolina, Texas, and Virginia). In fact, of the 95 cases involving state and local jurisdictions, more than a third (36%) involved one of the nine formerly-covered states. When ACLU cases involving states with covered localities are included (California, Florida, Michigan, New York, North Carolina), that proportion rises to nearly half (49%) of our cases. Of the 20 amicus briefs that the ACLU has submitted in cases brought by other organizations since *Shelby County*, 12 (60%) involved cases in one of the formerly covered states.⁵⁸

What these cases and obtained results have shown us is that, perhaps now more than ever, litigation is critical to stem the tide of assaults on voting rights. Between the 2012 and 2016 Presidential elections alone, the ACLU and its affiliates won 15 voting rights victories, protecting more than 5.6 million voters in 12 states that collectively are home to 161 members of the House of Representatives and wield 185 votes in the Electoral College.⁵⁹ In the run-up to and immediately after the 2020 presidential election, the ACLU won 28 positive outcomes in 21

⁵⁶ See, e.g., *League of United Latin Am. Citizens v. Abbott*, No. 3:21-cv-00259-DCG-JES-JVB (W.D. Tx. filed on Oct. 18, 2021).

⁵⁷ *Turtle Mountain Band of Chippewa Indians v. Howe*, No. 3:22-CV-22, 2023 WL 8004576 (D.N.D. Nov. 17, 2023). The case is currently on appeal.

⁵⁸ These numbers are based on a recent review of the ACLU Voting Rights Project's internal case management tracker.

⁵⁹ See Dale Ho, *Let People Vote: Our Fight for Your Right to Vote in This Election*, ACLU (Nov. 3, 2016), <https://www.aclu.org/blog/voting-rights/fighting-voter-suppression/let-people-vote-our-fight-your-right-vote-election>.

states and Puerto Rico to safeguard the voting rights of millions of Americans as the COVID-19 pandemic spread across the country and states struggled—or refused—to protect public health while ensuring access to the ballot. Since 2021, the ACLU has achieved 33 positive voting rights outcomes in 17 states. Of course, the ACLU is just one of many organizations tirelessly working to protect voting rights through litigation.⁶⁰

This data is powerful evidence that voting discrimination continues to plague our democratic process, particularly in the formerly covered jurisdictions.

II. Current Tools are Inadequate to Protect Voting Rights

Since *Shelby County*, Section 2 of the VRA has been the heart of federal safeguards on the right to vote. It applies nationwide, to every state and local jurisdiction, and it does not sunset. However, unlike the Section 5 preclearance regime, which applies *before* a law goes into effect, a Section 2 challenge can only come *after* a law is already enacted or a policy announced. Plaintiffs must go to court and litigate—a process that costs hundreds of thousands, if not millions, of dollars and often takes years—before a judge will strike down the law or order the practice stopped. This process is costly not just for Plaintiffs, but for the taxpayers who foot the bill if a map is struck down. In the interim, the law or practice remains in effect, which means multiple elections involving hundreds of elected officials may be irrevocably tainted—taking place under a discriminatory regime that a court later finds unlawful. And unlike some other civil rights, voters cannot be compensated once they lose their right to vote in an election or vote under discriminatory rules. Voters can only wait for the next election.

A. Voting rights cases are different than other civil rights litigation.

Case-by-case litigation after discriminatory laws have been enacted presents particularly troubling challenges in the voting context because voting rights litigation is different than other civil rights disputes. Think of an employment or housing discrimination case based on membership in a protected class. At least in theory, going through the legal process can restore that person's job or apartment, or make them whole through backpay or money damages.

Elections are different: once an election happens under a discriminatory regime, it is impossible to compensate the victims of discrimination. Their rights have been compromised irrevocably because the election cannot be re-run. While those voters may be able to vote in future elections free from discrimination, the officials who won an election run under unlawful practices gain the benefits of incumbency, making it harder to dislodge them from office. Those elected officials will make policy while in office, and courts cannot (and should not) dislodge those decisions, even if the mechanism under which they took office is later found to be unconstitutional or in violation of the VRA.

⁶⁰ In fact, several local ACLU offices across the country (the ACLU has local offices in all 50 states) have brought voting lawsuits since 2020 that are not on the ACLU Voting Rights Project's docket, including: (1) ACLU of Florida's two recent local redistricting lawsuits in *Jacksonville Branch of the NAACP v. City of Jacksonville*, and *Grace Inc. v. City of Miami*; (2) *Baltimore County NAACP v. Baltimore County*; and (3) ACLU of Texas in *Fair Maps Texas Action Committee v. Abbott* challenging new Texas state legislative and congressional maps as violations of the U.S. Constitution and VRA.

In short, voting rights are different. The ability to challenge a law or policy after it has been enacted or implemented is a critical tool in combating voting discrimination, but reauthorizing a preclearance regime that prophylactically stops discriminatory changes from going into effect in the first place is necessary to ensure that racial discrimination is blocked before it can take root.

B. Section 2 cases are expensive, resource intensive, and time-consuming.

Section 2 cases are very costly to bring, both in terms of money and time. By its very nature, bringing a Section 2 case requires a significant investment at the outset, with no promise of eventual success or recouping any costs. As the Supreme Court recognized last year, “§ 2 litigation in recent years has rarely been successful” and “[s]ince 2010, plaintiffs nationwide have apparently succeeded in fewer than ten § 2 suits.”⁶¹ This makes it harder for plaintiffs to bring Section 2 cases at all. And even in cases that succeed, the burdens of litigation make Section 2 an insufficient substitute for preclearance.

1. Section 2 cases are expensive and resource intensive.

Section 2 litigation requires intensive fact development. Plaintiffs must assemble local election data and hire experts to offer expensive and complex statistical testimony. Historians and social scientists are often needed to describe past and ongoing discrimination in the jurisdiction. Candidates, elected officials, and community leaders are frequently called upon to testify about their personal experiences with bloc voting, the responsiveness of elected officials, racial appeals in campaigns, and the like.⁶² As a result, the cost of a Section 2 case regularly falls in the six to seven-figure range.⁶³

A few examples from the ACLU’s recent Section 2 litigation experience reflects the considerable monetary costs of these cases:

- In *North Carolina State Conference of NAACP v. North Carolina* (“*N.C. NAACP v. McCrory*”),⁶⁴ which successfully challenged North Carolina’s omnibus bill limiting early voting and same-day registration, requiring certain forms of photo identification, and banning out-of-precinct voting, plaintiffs were awarded

⁶¹ *Allen v. Milligan*, 599 U.S. 1, 29 (2023).

⁶² See Christopher S. Elmendorf & Douglas M. Spencer, *Administering Section 2 of the Voting Rights Act After Shelby County*, 115 Colum. L. Rev. 2143 (2015).

⁶³ H.R. Rep. No. 116-317, at 60 (2019) (noting testimony that “costs for a Section 2 case can range from hundreds of thousands of dollars to \$10 million.”); Br. of Joaquin Avila et al. as Amici Curiae in Support of Resp’ts at 24, *Shelby Cnty.*, 570 U.S., No. 12-96 (“Section 2 cases regularly require minority voters and their lawyers to risk six- and seven-figure expenditures for expert witness fees and deposition costs.”) (citing *To Examine the Impact and Effectiveness of the Voting Rights Act: Hearing Before the Subcomm. on the Constitution of the H. Comm. on the Judiciary*, 109th Cong. (2005)), available at <https://www.brennancenter.org/sites/default/files/legal-work/2013.2.1%20Brief%20of%20Joaquin%20Avila%20et%20al.%20in%20Support%20of%20Respondents.pdf>.

⁶⁴ 831 F.3d. 204.

\$5,922,165.28 for the costs and fees associated with the litigation, including multiple unsuccessful appeals.⁶⁵

- In *National Association for the Advancement of Colored People v. East Ramapo Central School District* (“*NAACP v. East Ramapo*”),⁶⁶ a Section 2 case that successfully challenged the at-large method of election for the East Ramapo, New York school board, the plaintiffs were awarded \$5,446,139.99 in costs and fees.⁶⁷
- In *Montes v. City of Yakima*,⁶⁸ which successfully challenged the at-large voting system for the City Council of Yakima, Washington under Section 2, the plaintiffs were awarded \$1,521,911.59 in costs and fees.⁶⁹
- In *Wright v. Sumter County Board of Elections and Registration*,⁷⁰ a Section 2 case brought by the ACLU and partners that successfully challenged the at-large method of electing the Sumter County, Georgia school board members,⁷¹ plaintiffs were awarded \$786,929.98 for the costs and fees incurred to litigate the case.⁷²
- In *Missouri State Conf. of National Association for Advancement of Colored People v. Ferguson-Florissant School District*, a Section 2 case that successfully challenged the Ferguson-Florissant School District Board’s method of conducting at-large elections to elect Board members under Section 2, Plaintiffs incurred \$1,137,920.05 in attorneys’ fees and \$232,320.43 in non-taxable expenses.⁷³

Although the ACLU eventually recovered its costs in the cases above, litigation requires that plaintiffs pay such expenses up front without any promise of success. Given their cost and complexity, it should be no surprise that many affected voters and the lawyers that would represent them (frequently nonprofit legal organizations and local civil rights attorneys with limited resources) simply decline to bring Section 2 cases in the first place.

⁶⁵ Mem. Order, *McCrary*, 831 F.3d (No. 1:13-cv-00861-TDS-JEP), ECF No. 508.

⁶⁶ 462 F. Supp. 3d 368 (S.D.N.Y. 2020), *aff’d sub nom.*, *Clerveaux v. E. Ramapo Cent. Sch. Dist.*, 984 F.3d 213 (2d Cir. 2021).

⁶⁷ *NAACP v. E. Ramapo*, 462 F. Supp. 3d (No. 7:17-CV-08943), ECF No. 694.

⁶⁸ 40 F. Supp. 3d 1377 (E.D. Wash. 2014).

⁶⁹ Order, *Montes*, 40 F. Supp. 3d (No. 2:12-CV-03108-TOR), ECF No. 186.

⁷⁰ 979 F.3d 1282 (11th Cir. 2020) (affirming finding of a Section 2 violation).

⁷¹ See Nicholas Casey, *A Voting Rights Battle in a School Board ‘Coup’*, N.Y. Times (Nov. 3, 2020), <https://www.nytimes.com/2020/10/25/us/politics/voting-rights-georgia.html>.

⁷² Order, *Wright*, 979 F.3d (No. 1:14-CV-00042-WLS), ECF No. 322.

⁷³ No. 4:14-cv-2077-RWS, 2020 WL 2747306, at *1 (E.D. Mo. May 27, 2020).

2. Section 2 cases are time-consuming.

Even when cases are brought, it typically takes years to litigate a Section 2 claim to completion.⁷⁴ That may reflect the simple fact that voting rights litigation tends to be quite complex. As former ACLU Voting Rights Project Director, Laughlin McDonald, explained in testimony before the Senate 18 years ago:

[Section 2 cases] are among the most difficult cases tried in federal court. [V]oting rights cases impose almost four times the judicial workload of the average case. Indeed, voting cases are more work intensive than all but five of the sixty-three types of cases that come before the federal district courts.⁷⁵

The ACLU's Section 2 litigation experience bears this out. The following table summarizes the ACLU's Section 2 litigation since *Shelby County*, including the length of time it has taken to litigate the case from filing to resolution⁷⁶:

ACLU Section 2 Cases Litigated to Judgment/Settlement since <i>Shelby County</i>						
Case name	Citation	Practice Challenged	Date Filed	Date Resolved	Days	Success?
<i>Bethea v. Deal</i>	No. CV216-140, 2016 WL 6123241 (S.D. Ga. Oct. 19, 2016)	Failure to extend voter registration deadline after hurricane	10/17/16	10/19/16	2	N
<i>Frank v. Walker</i>	768 F.3d 744 (7th Cir. 2014)	Voter ID	12/13/11	3/23/15	1197 ⁷⁷	N
<i>Florida Dem. Party v. Scott</i>	No. 4:16CV626-MW/CAS, 2016 WL 6080225 (N.D. Fla. Oct. 12, 2016)	Failure to extend voter registration deadline after hurricane	10/9/16	10/12/16	3	Y

⁷⁴ See *Voting Rights Act: Section 5 of the Act – History, Scope, and Purpose: Hearing Before the Subcomm. on the Constitution of the H. Comm. on the Judiciary*, 109th Cong. 92 (2005) (“Two to five years is a rough average” for the length of Section 2 lawsuits).

⁷⁵ *An Introduction to the Expiring Provisions of the Voting Rights Act and Legal Issues Relating to Reauthorization: Hearing Before the S. Comm. on the Judiciary*, 109th Cong. 141 (2006) (statement of Laughlin McDonald, Director, ACLU Voting Rights Project).

⁷⁶ “Date Resolved” reflects the date upon which a case was fully resolved on the merits either through a court decision and exhaustion of any appeals, through a consent decree, or through a settlement between the parties.

⁷⁷ Litigation on plaintiffs’ as-applied constitutional claims remained ongoing until January 2023, but the Seventh Circuit rejected our Section 2 claims in 2014, and the Supreme Court denied a petition for review of that decision in March 2015.

ACLU Section 2 Cases Litigated to Judgment/Settlement since <i>Shelby County</i>						
Case name	Citation	Practice Challenged	Date Filed	Date Resolved	Days	Success?
<i>Jackson v. Bd. of Trustees of Wolf Point</i>	No. CV-13-65-GF-BMM-RKS, 2014 WL 1794551 (D. Mont. Apr. 21, 2014), <i>R. & R. adopted as modified sub nom.</i> 2014 WL 1791229 (D. Mont. May 6, 2014)	School redistricting	8/7/13	4/14/14 ⁷⁸	250	Y
<i>Rangel-Lopez v. Cox</i>	344 F. Supp. 3d 1285 (D. Kan. 2018)	County polling place closure	10/26/18	1/30/19	96	Y ⁷⁹
<i>Mo. State Conf. of the NAACP v. Ferguson-Florissant Sch. Dist.</i>	894 F.3d 924 (8th Cir. 2018), <i>cert. denied</i> , 139 S. Ct. 826 (2019)	School Board At-Large Elections	12/18/14	1/7/19	1482	Y
<i>Montes v. City of Yakima</i>	No. 12-CV-3108-TOR, 2015 WL 11120964 (E.D. Wash. Feb. 17, 2015)	City At-Large Elections	8/22/12	2/17/15 ⁸⁰	910	Y
<i>MOVE Texas Civic Fund v. Whitley</i>	No. 5:19-cv-00171 (W.D. Tex. Feb 22, 2019) ⁸¹	Statewide voter purge	2/4/19	4/29/19	85	Y
<i>NAACP v. East Ramapo</i>	462 F. Supp. 3d 368 (S.D.N.Y. 2020), <i>aff'd</i> 984 F.3d 213 (2d Cir. 2021)	School Board At-Large Elections	11/16/17	1/6/21	1147	Y
<i>N.C. NAACP v. McCrory</i>	831 F.3d 204 (4th Cir. 2016), <i>cert. denied</i> , 137 S. Ct. 1399 (2017)	Voter ID; Early Voting; Same-day registration; Out-of-Precinct Ballots; Pre-Registration	8/30/13	5/15/17	1355	Y
<i>Navajo Nation Human Rts. Comm'n v. San Juan Cnty.</i>	No. 2:16-cv-00154 (D. Utah 2016)	All-mail voting, elimination of polling places	2/26/16	2/21/18 ⁸²	727	Y

⁷⁸ This date reflects the date the district court adopted a joint consent decree proposed by parties on both sides; later proceedings centered around attorney's fees and costs.

⁷⁹ Although the court denied the plaintiffs' Motion for a Temporary Restraining Order, the plaintiffs voluntarily moved to dismiss the case after the defendants announced the opening of new polling locations. See *ACLU of Kansas Declares Victory; Files Voluntary Motion to Dismiss Dodge City Voting Access Suit*, ACLU of Kansas (Jan. 25, 2019), <https://www.aclukansas.org/en/press-releases/aclu-kansas-declares-victory-files-voluntary-motion-dismiss-dodge-city-voting-access>.

⁸⁰ This is the date the court adopted a remedial plan, later proceedings focused on attorney's fees and costs.

⁸¹ Parties on both sides filed a joint motion to dismiss because of a reached settlement.

⁸² This date reflects when the settlement from the parties was reached and announced. See *Settlement Announced in Navajo Nation Human Rights Commission v. San Juan County*, ACLU of Utah (Feb. 21, 2018), <https://www.aclutah.org/newsroom/item/1418-settlement-announced-in-navajo-nation-human-rights-commission-v-san-juan-county>.

ACLU Section 2 Cases Litigated to Judgment/Settlement since <i>Shelby County</i>						
Case name	Citation	Practice Challenged	Date Filed	Date Resolved	Days	Success?
<i>Ohio State Conf. of the NAACP v. Husted</i>	No. 2:14-CV-00404 (S.D. Ohio 2014)	Early Voting	5/1/14	4/17/15 ⁸³	352	Y
<i>People First Alabama v. Merrill</i>	491 F. Supp. 3d 1076 (N.D. Ala. 2020)	Absentee Ballot Excuse Requirement (COVID-19)	5/1/20	11/16/20	200	N ⁸⁴
<i>Wright v. Sumter Cnty. Bd. of Elections & Registration</i>	301 F. Supp. 3d 1297 (M.D. Ga. 2018), <i>aff'd</i> 979 F.3d 1282 (11th Cir. 2020)	County Redistricting	3/7/14	10/27/20	2427	Y

The average length of time that the ACLU's Section 2 cases have taken to litigate is 731 days or over two years. When emergency cases, such as those brought after natural disasters to extend an election-related deadline or those brought to accommodate voters in the COVID-19 pandemic, are excluded, this average jumps to 911 days or approximately thirty months, over two and a half years. But this does not include currently pending cases. The following table summarizes the ACLU's pending Section 2 litigation, including the number of days the case has been pending:

Pending ACLU Section 2 Cases					
Case name	Citation	Practice Challenged	Date Filed	Days Pending	Interim Success?
<i>Sixth District of the AME Church v. Kemp</i>	Case No. 1:21-mi-55555-JPB	Restrictive absentee voting laws and laws around ballot acceptance	3/29/21	1,078	N ⁸⁵
<i>Milligan v. Allen</i>	Case No. 2:21-cv-01530-AMM	Alabama congressional redistricting map	11/16/21	848	Y (preliminary injunction)

⁸³ This date reflects when the parties reached a settlement and moved to dismiss the case.

⁸⁴ In this case, the trial court judge found a violation of Section 2 and entered an injunction barring the application of the excuse requirement to vote absentee; on appeal, the Eleventh Circuit granted a stay of the injunction without explaining its reasoning, *see Op.*, *People First Ala. v. Merrill*, 491 F. Supp. 3d 1076 (No. 20-13695-B), 2020 WL 6074333 (likely relying on *Purcell v. Gonzalez*, *see infra.*).

⁸⁵ The Court ultimately granted preliminary injunctions under the First Amendment against the line-relief ban outside the 150-foot buffer zone and under the Materiality Provision of the Civil Rights Act against the provision against counting absentee ballots missing a birthdate, but only did so in 2023 for the 2024 elections.

Pending ACLU Section 2 Cases					
Case name	Citation	Practice Challenged	Date Filed	Days Pending	Interim Success?
<i>Stone v. Allen</i>	Case No. 2:21-cv-01531-AMM (N.D. Ala.)	Alabama State Senate redistricting map	11/16/21	846	N
<i>Arkansas NAACP v. Arkansas Board of Apportionment</i>	Case No. 4:21-cv-01239-LPR (E.D. Ark.)	Arkansas state legislative redistricting map	12/29/21	803	N ⁸⁶
<i>Alpha Phi Alpha v. Raffensperger</i>	Case No. 1:21-cv-05337-SCJ (N.D. Ga.)	Georgia state legislative redistricting maps	12/30/21	802	Y (trial win, on appeal)
<i>White v. Mississippi Board of Elections</i>	Case No. 4:22-cv-00062-SA-JMV (N.D. Miss.)	Mississippi Supreme Court districting	04/25/22	686	N
<i>Mississippi NAACP v. Mississippi Board of Elections</i>	Case No. 3:22-cv-00734-DPJ-HSO-LHS (S.D. Miss.)	Mississippi state legislative redistricting maps	12/02/22	465	N
<i>Robinson v. Ardoin</i>	Case No. 3:22-cv-00211-SDD-SDJ (M.D. La.)	Louisiana congressional redistricting map	03/30/22	712	Y ⁸⁷
<i>Nairne v. Ardoin</i>	Case No. 3:22-cv-00178-SDD-SDJ (M.D. La.)	Louisiana state legislative redistricting maps	03/14/22	728	Y (trial win, on appeal)
<i>Coca v. Dodge City, Kansas</i>	Case No. 6:22-cv-01274-EFM (D. Kan.)	At-large city council districts	12/15/22	452	N

The average length of time ACLU's active Section 2 cases have been pending is 742 days. Most are still at the trial court, and three have trials scheduled 5–11 months from now. In short, voting rights cases start with the baseline pace of litigation, which can be frustratingly slow for all parties, and add an additional layer of complexity, causing cases to drag on for years.

⁸⁶ The en banc Eighth Circuit denied rehearing on January 30, 2024. Plaintiffs have until April 29, 2024, to petition for a writ of certiorari in the U.S. Supreme Court.

⁸⁷ The trial court in *Robinson* granted plaintiffs' request for a preliminary injunction on June 6, 2022, a decision that the Supreme Court stayed following the Fifth Circuit's denial of Louisiana's stay request. *Ardoin v. Robinson*, 142 S. Ct. 2892 (2022). The Court held the case in abeyance until it ruled on *Allen v. Milligan* in June 2023, which led the Court to vacate the stay and return the case to the Fifth Circuit for review in its ordinary course. *Ardoin v. Robinson*, 143 S. Ct. 2654 (2023). The Fifth Circuit affirmed the district court's ruling on the merits but vacated the preliminary injunction because, according to the panel, the Legislature had time to pass a new lawful map before the 2024 elections. In January 2024, the Legislature passed a map containing two opportunity districts for Black voters. That map is now subject to ongoing litigation in *Robinson* and *Callais v. Landry*, No. 3:24-cv-00122-DCJ-CES-RRS (W.D. La. 2024).

C. Elections can take place under discriminatory regimes while Section 2 litigation is pending.

In the time it takes to litigate a Section 2 case, many elections can take place, with millions of votes cast to elect hundreds of government officials elected while the litigation remains pending. Preliminary relief is theoretically available to prevent elections from proceeding under challenged regimes while a case is being litigated. But preliminary injunctions are difficult to win in Section 2 cases under current standards. In fact, two leading civil rights lawyers estimated that preliminary injunctions were granted in fewer than 5% of Section 2 cases.⁸⁸ This means that even when the law is on the plaintiffs' side, multiple elections take place under practices later found to be discriminatory—and there is no way to adequately compensate the victims of voting discrimination after-the-fact.

Our experience litigating a vote dilution challenge to the at-large method of elections for the Ferguson-Florissant School Board in Missouri is illustrative. The Ferguson-Florissant school district was created pursuant to a 1975 desegregation order.⁸⁹ In 2014, the district's student body was approximately 80% Black, but Black residents were a minority of the district's voting-age population. Due to racially polarized voting, as recently as 2014, there was not a single Black board member on the seven-member school board. Our lawsuit was ultimately successful, with the Eighth Circuit affirming in a unanimous opinion that the Board's at-large method of elections violated Section 2.⁹⁰ But the case took four years to litigate—and elections in 2015, 2016, 2017, and 2018 were held while proceedings were ongoing. In that time, nine school board members were elected.⁹¹

The following table shows Section 2 cases decided since *Shelby County* that have been reported in Westlaw⁹² where plaintiffs sought a preliminary injunction, unsuccessfully, and later went on to win relief.⁹³

⁸⁸ See Elmendorf & Spencer, *supra* note 19, at 2145 (citing Gerald Hebert & Armand Derfner, *More Observations on Shelby County, Alabama, and the Supreme Court*, Campaign Legal Ctr. (Mar. 1, 2013), <http://www.campaignlegalcenter.org/news/blog/more-observations-shelby-county-alabama-and-supreme-court> (“The actual number of preliminary injunctions that have been granted in the hundreds of Section 2 cases that have been filed over the years is quite small, likely putting the percentage at less than 5%, and possibly quite lower.”)).

⁸⁹ *Mo. State Conf. of the NAACP v. Ferguson-Florissant Sch. Dist.*, 894 F.3d 924, 930 (8th Cir. 2018).

⁹⁰ *See id.*

⁹¹ *See Election Results Archive*, Saint Louis County, Missouri, <https://stlouiscountymo.gov/st-louis-county-government/board-of-elections/election-results-archive/> (last visited June 25, 2021) (collecting election results from April 7, 2015, April 5, 2016, April 4, 2017, and April 3, 2018 elections).

⁹² While we have attempted to be systematic in this research, we do not purport to present a complete picture of all Section 2 litigation. Because this analysis is limited only to cases reported on Westlaw that specifically cite to Section 2's codification in the U.S. Code, it is likely under-inclusive. For example, if a Section 2 case settles without a judicial opinion, it may not appear in such a database. For more information, a helpful database of Section 2 cases is available at the Michigan University School of Law's Voting Rights Initiative's Section 2 Cases Database. *Section 2 Cases Database*, Michigan University School of Law's Voting Rights Initiative, (Feb. 29, 2024), <https://voting.law.umich.edu/database/>.

⁹³ This includes cases where relief was obtained by winning a final decision on the merits or favorable settlement. This largely borrows from Professor Ellen Katz's definition of a “successful” Section 2 case. *See* University of

Section 2 Cases – Preliminary Relief Denied, but Ultimately Successful					
Case Name	Citation	Challenged Practice	Prelim. Inj. Sought	Relief Granted ⁹⁴	Days to Relief
<i>Wandering Medicine v. McCulloch</i>	No. CV 12-135-BLG-DWM, 2014 WL 12588302 (D. Mont. 2014)	Polling Places; Registration Deadline	10/10/12 ⁹⁵	6/13/14 ⁹⁶	611
<i>Jackson v. Bd. of Trustees of Wolf Point</i>	No. CV-13-65-GF-BMM-RKS, 2014 WL 1794551 (D. Mont. Apr. 21, 2014), <i>R. & R. adopted as modified sub nom.</i> 2014 WL 1791229 (D. Mont. May 6, 2014)	School Redistricting	8/7/13	4/14/14 ⁹⁷	250
<i>Favors v. Cuomo</i>	39 F. Supp. 3d 276 (E.D.N.Y. 2014)	State Legislative Redistricting	3/27/12	11/5/13	588
<i>Benavidez v. Irving Indep. Sch. Dist.</i>	No. 3:13-CV-0087-D, 2014 WL 4055366 (N.D. Tex. Aug. 15, 2014)	At-Large Elections	1/8/13	8/15/14	584
<i>Mo. State Conf. of the NAACP v. Ferguson-Florissant Sch. Dist.</i>	894 F.3d 924 (8th Cir. 2018), <i>cert. denied</i> , 139 S. Ct. 826 (2019)	At-Large Elections	12/2/15 ⁹⁸	7/3/18	944
<i>N.C. NAACP v. McCrory</i>	831 F.3d 204 (4th Cir. 2016), <i>cert. denied</i> , 137 S. Ct. 1399 (2017)	Voter ID; Early Voting; Same Day Registration	5/19/14	7/29/16	1092
<i>Pope v. Cnty. of Albany</i>	94 F. Supp. 3d 302 (N.D.N.Y. 2015)	County Redistricting	7/15/11 ⁹⁹	3/24/15	1348

Michigan School of Law Voting Rights Initiative, *About the Project*, <https://voting.law.umich.edu/about/> (“Successes include: Issuance of a preliminary injunction, a finding for a plaintiff on the merits, a decision issuing attorneys’ fees in a manner that indicated a plaintiff had been successful on the merits or through settlement, or if the plaintiff achieved some other positive outcome. Cases involving multiple Section 2 claims in which plaintiffs were successful on at least one. Fees or remedy cases in which defendants stipulated that the challenged practice had violated Section 2, even if plaintiffs were unable to obtain attorneys’ fees or the post-settlement relief sought.”).

⁹⁴ The date in the “Relief Granted” column reflects the date of whatever court decision on the merits, consent decree, or settlement between the parties, first began to provide relief for the plaintiffs.

⁹⁵ 906 F. Supp. 2d 1083 (D. Mont. 2012) (preliminary injunction denied), *aff’d* 544 F. App’x 699 (9th Cir. 2013).

⁹⁶ Relief was granted through a settlement between the parties. See *Wandering Medicine v. Mont. Sec’y of State*, ACLU of Montana, <https://www.aclumontana.org/en/cases/wandering-medicine-v-montana-secretary-state> (last visited June 25, 2021).

⁹⁷ This date reflects the date the district court adopted a joint consent decree proposed by parties on both sides; later proceedings centered around attorney’s fees and costs.

⁹⁸ In this case, we moved for summary judgment (which was denied) and then for interim relief in the event that liability was established at trial, rather than a preliminary injunction. In Section 2 cases challenging at-large elections, if liability is established, there frequently can be a substantial delay before relief is ordered, given the complexities of crafting a remedial election plan. See Mem. in Support of Pls.’ Mot. for Interim Relief, *Mo. State Conf. of the NAACP v. Ferguson-Florissant Sch. Dist.*, 894 F.3d 924 (8th Cir. 2018) (No. 16-4511), 2015 WL 13249955 (Dec. 2, 2015) (describing requested relief).

⁹⁹ No. 1:11-CV-00736 LEK/DRH, 2011 WL 3651114 (N.D.N.Y. Aug. 18, 2011), *aff’d*, 687 F.3d 565 (2d Cir. 2012) (denying motion for preliminary injunction).

Section 2 Cases – Preliminary Relief Denied, but Ultimately Successful					
Case Name	Citation	Challenged Practice	Prelim. Inj. Sought	Relief Granted ¹⁰⁰	Days to Relief
<i>Veasey v. Abbott</i>	830 F.3d 216 (5th Cir. 2016)	Voter ID	9/1/13	8/10/16	1074
<i>Navajo Nation v. San Juan Cnty.</i>	162 F. Supp. 3d 1162 (D. Utah 2016), 266 F. Supp. 3d 1341 (D. Utah 2017), <i>aff'd</i> , 929 F.3d 1270 (10th Cir. 2019)	Districting	1/12/12	7/16/19	2742
<i>Navajo Nation Human Rts. Comm. v. San Juan Cnty</i>	No. 2:16-cv-00154 (D. Utah 2016)	Vote by Mail	2/25/16	2/22/18 ¹⁰⁰	728
<i>Ala. State Conf. of the NAACP v. City of Pleasant Grove</i>	372 F. Supp. 3d 1333 (N.D. Ala. 2019) (denying MTD); No. 2:18-CV-02056-LSC, 2019 WL 5172371 (N.D. Ala. Oct. 11, 2019)	At-Large Elections	12/13/18	10/11/19	302
<i>Flores v. Town of Islip</i>	No. 18-CV-3549-GRB-ST, 2020 WL 6060982 (E.D.N.Y. Oct. 14, 2020)	At-Large Districts	3/1/19	10/14/20	592
<i>Blackfeet Nation v. Stapleton</i>	No. 4:20-CV-00095-DLC (D. Mont. 2020)	Failure to open Satellite election office	10/9/20	10/12/20	3
<i>NAACP v. East Ramapo</i>	462 F. Supp. 3d 368 (S.D.N.Y. 2020), <i>aff'd</i> 984 F.3d 213 (2d Cir. 2021)	School Districting	12/8/17	5/26/20	900
<i>Spirit Lake Tribe v. Jaeger</i>	No. 1:18-CV-222, 2018 WL 5722665 (D.N.D. 2018)	Voter ID	10/30/18	4/24/20	542
<i>Alpha Phi Alpha v. Raffensperger</i>	587 F. Supp. 3d 1222 (N.D. Ga. 2022); No. 1:21-CV-05337-SCJ, 2023 WL 7037537 (N.D. Ga. Oct. 26, 2023)	State legislative redistricting	1/07/22	10/26/23	657
<i>Grant v. Raffensperger</i>	587 F. Supp. 3d 1222 (N.D. Ga. 2022); No. 1:22-cv-00122-SCJ, 2023 WL 7037537 (N.D. Ga. Oct. 26, 2023)	State legislative redistricting	1/13/22	10/26/23	651
<i>Pendergrass v. Raffensperger</i>	587 F. Supp. 3d 1222 (N.D. Ga. 2022); No. 1:21-cv-05339-SCJ, 2023 WL 7037537 (N.D. Ga. Oct. 26, 2023)	Congressional redistricting	1/12/22	10/26/23	652

The average length of time that it has taken to obtain relief in these Section 2 cases is 792¹⁰¹ days (or approximately 26 months)—more than the two-year standard federal election cycle—during which hundreds of state and federal government officials have been elected under regimes later found to be discriminatory. For example, before litigation in *North Carolina NAACP v. McCrory* came to a successful close, voters in North Carolina chose 188 federal and

¹⁰⁰ This date reflects when the parties reached and announced a settlement. See *Settlement Announced in Navajo Nation Human Rights Commission v. San Juan County*, ACLU of Utah (Feb. 21, 2018), <https://www.aclutah.org/newsroom/item/1418-settlement-announced-in-navajo-nation-human-rights-commission-v-san-juan-county>.

¹⁰¹ Without the outlying *Blackfeet Nation v. Stapleton* lawsuit, the average length of time rises to 837 days.

state officials under rules later struck down as unlawful.¹⁰² Thus, even where plaintiffs moved quickly and sought preliminary relief, Section 2 litigation is an inadequate tool to prevent a discriminatory law from tainting elections.

III. The development of the so-called *Purcell* principle has further constrained the effectiveness of Section 2 and other voting rights protections.

As noted above, preliminary relief blocking a challenged practice while litigation continued in due course was supposed to solve the problem of holding elections under schemes later found unconstitutional or illegal. Indeed, the Supreme Court in *Shelby County* cited the assumption that plaintiffs would still be able to obtain preliminary or emergency relief in voting rights cases as a reason preclearance was no longer necessary.¹⁰³

But preliminary relief has too often proved inadequate to meet the threats to voting rights. Because Section 2 cases are so complex and fact-intensive, it is often difficult to win on a less-than-full trial record. But the problem has only worsened with the growth, at the Supreme Court's direction, of the so-called "*Purcell* principle," *i.e.*, the idea that courts should be cautious issuing orders that might change election rules in the period right before an election.¹⁰⁴

In the years following *Purcell v. Gonzalez*,¹⁰⁵ the brief, unsigned decision that spawned the *Purcell* principle, courts have used this "principle" to hijack the case-specific analysis for obtaining preliminary relief. The instruction to consider possible voter confusion and administrative burdens that may ensue if a court intervenes close to an election now works as something close to a bright-line rule against entering relief for plaintiffs several months from Election Day—even where the sought relief would neither confuse voters nor impose administrative burdens. At the same time, courts have applied the rule inconsistently, often with little explanation, making it harder for officials and voters alike to understand why courts have blocked relief for voters in a specific case. This fuels the perception that the principle is being used in one direction only: to stymie voting rights advocates' efforts to protect voters from discriminatory laws and practices, and to block those *before* they can taint an election.

A. *Purcell v. Gonzalez*: A narrow, fact-specific decision.

The *Purcell* decision itself is a narrow, fact-specific ruling. It bears little resemblance to the so-called "*Purcell* principle" that hovers like a dark cloud over voting rights today.

¹⁰² *NC SBE Contest Results*, North Carolina State Board of Elections, <https://er.ncsbe.gov> (accessing 2014 election results through the filters on the dashboard).

¹⁰³ 570 U.S. at 537 ("Both the Federal Government and individuals have sued to enforce § 2 . . . and injunctive relief is available in appropriate cases to block voting laws from going into effect[.]") (citations omitted); *see also* Oral Arg. Tr., *Shelby Cnty.*, No. 12-96, 2013 WL 6908203, at *25 (Justice Kennedy: "Is [a Section 2 suit] an effective remedy?" Pls. Counsel: "It is—number one, it is effective. There are preliminary injunctions.")

¹⁰⁴ *See* Hasen, *supra* note 16, at 428.

¹⁰⁵ 549 U.S. 1 (2006).

In 2006, Plaintiffs—residents of Arizona, Indian tribes, and community organizations—moved for a preliminary injunction barring the state from implementing a voter identification requirement; the district court denied the request, but the Ninth Circuit Court of Appeals granted in a short, three-line order.¹⁰⁶ The defendants—the State of Arizona and county election officials—appealed to the Supreme Court, which dissolved the Court of Appeals’ injunction. In doing so, the Court warned that “[c]ourt orders affecting elections . . . can themselves result in voter confusion and consequent incentive to remain away from the polls,” and that “[a]s an election draws closer, that risk will increase.”¹⁰⁷ Considering the election’s imminence, the need for clarity and given the Ninth Circuit’s lack of explanation, the Supreme Court vacated the Ninth Circuit’s injunction and allowed the election to proceed under new voter ID rules.¹⁰⁸

The crux of the decision was procedural error and the relationship between trial and appellate courts. Nothing in *Purcell* purports to assert a hard-and-fast rule that courts should never intervene within several months of an election. Yet, following the Supreme Court’s lead, courts now cite *Purcell*—a narrow decision that described commonsense factors that a court should consider when an election is imminent—as an inviolable bar on granting any relief in the period before an election.

B. The *Purcell* principle has left unlawful and unconstitutional voting laws in place for years.

Aggressive application of the *Purcell* principle in the past decade has meant that voting laws ultimately found to be unlawful remain in place for years—even if courts agree that the laws are racially discriminatory—simply because the reviewing federal court would have had to block them in the period “close” to an election. But “close” to an election has become a moving target such that courts now often refrain from intervening in some cases several months before an election. As a result, many elections take place, and candidates assume office, under discriminatory or otherwise unlawful regimes as the window to challenge them narrows. This concern is magnified in the wake of *Shelby County* and the loss of the preclearance regime that would have prevented many of these laws from being enacted—or even proposed in the first instance.

The following cases starkly illustrate this concern:

Milligan v. Allen (Congressional Redistricting Plan). In late 2021, along with the ACLU of Alabama, Legal Defense Fund, and cooperating law firms, the ACLU challenged Alabama’s congressional redistricting plan as racially discriminatory under Section 2 and the Fourteenth Amendment. Despite Alabama having stark racially polarized voting, continuing discrimination in the political system, and a Black voting-age population over 27% concentrated in compact areas, Black voters had an opportunity to elect a representative of their choosing in only one of Alabama’s seven districts. Alabama’s legislature accomplished this by “cracking,” or

¹⁰⁶ See Order, *Gonzalez v. Arizona*, No. 06-16702, ECF No. 16 (9th Cir. Sept. 18, 2006).

¹⁰⁷ *Purcell*, 549 U.S. at 4–5.

¹⁰⁸ *Id.*

breaking up a region of the State called the Black Belt—an area of primarily majority Black counties that includes Montgomery and Selma—into four different congressional districts.

In January 2022, a three-judge panel agreed that Alabama’s congressional plan unfairly diluted Black voters’ voting power. The court enjoined Alabama’s congressional map under Section 2 and gave the State an opportunity to redraw the map before the 2022 elections with a second district where Black Alabamians could have a fair chance at electing a candidate of their choice. Alabama did no such thing. It appealed and asked the Supreme Court to block the district court’s ruling. The Supreme Court did just that: it stayed the three-judge panel’s decision, with Justice Kavanaugh applying a new, enhanced version of *Purcell* and explaining that due to the proximity to the next election, the required changes to the congressional plan were not “feasible without significant cost, confusion, or hardship.”¹⁰⁹ The Court also agreed to take up the case on the merits—a process of briefing, oral argument, and waiting that played out over the course of approximately 16 months. During this time, an entire election cycle elapsed under the maps the three-judge panel found highly likely to violate Section 2 of the VRA. It is likely no coincidence that the turnout gap between Black and white Alabama voters in the 2022 general election was the widest in over a decade—nine percentage points by one estimate¹¹⁰—and had Alabama’s lowest turnout in 36 years according to the Alabama Secretary of State’s own figures.¹¹¹

In June 2023, the Supreme Court issued a landmark ruling that affirmed the district court’s decision and paved the way for a new, fairer congressional map for Black Alabamians. And indeed, Black voters will go to the polls this year to vote under a map that, for the first time in Alabama’s history, contains two districts in which they can elect candidates of their choice.

But this historic win for Black voters cannot erase the harm they suffered due to the *Purcell* principle’s application: 2022 congressional elections proceeded apace under the racially discriminatory map. Nor did the Court’s eventual decision affirming the injunction end the fight. After the Court’s ruling, Alabama chose defiance over compliance when given the chance to draw a new map. It did so by passing a new congressional map that it in the words of the district court “[did] not provide the remedy we said federal law requires.”¹¹² The court was “disturbed by the evidence that the State . . . ultimately did not even nurture the ambition to provide the required remedy.” It remarked that it was “not aware of any other case in which a state legislature—faced with a federal court order . . . requiring a plan that provides an additional opportunity district—responded with a plan that the state concedes does not provide that district.”¹¹³ And while this ended the fight for 2024, Alabama has persisted in defending its discriminatory map, with a trial set for February 2025.

¹⁰⁹ *Merrill v. Milligan*, 142 S. Ct. 879, 881–82 (2022) (Kavanaugh, J., concurring).

¹¹⁰ Kevin Morris & Coryn Grange, *10 Years After SCOTUS Gutted Voting Rights Act, Alabama Turnout Gap Is Worse*, Brennan Ctr. For Justice (June 22, 2023), <https://www.brennancenter.org/our-work/analysis-opinion/10-years-after-scotus-gutted-voting-rights-act-alabama-turnout-gap-worse>.

¹¹¹ John Sharp, *Alabama’s midterm election turnout worst in at least 36 years*, AL.com (Nov. 9, 2022), <https://www.al.com/election/2022/11/alabamas-midterm-election-turnout-worst-in-at-least-36-years.html>.

¹¹² *Milligan v. Allen*, No. 2:21-CV-1291-AMM, 2023 WL 5691156, at *3 (N.D. Ala. Sept. 5, 2023).

¹¹³ *Id.* at *4.

The stay in *Milligan* also had downstream impacts in other redistricting cases. In Georgia, for example, the Supreme Court’s order came down on the first day of an evidentiary hearing to on the merits of Georgia’s state legislative and congressional maps. The district court concluded that the plaintiffs had shown the maps likely violated the VRA, but still denied preliminary relief on the basis of the *Milligan* stay. While plaintiffs prevailed at trial this past October, congressional and state legislative elections in 2022 proceeded in the meantime under the discriminatory maps. Congressional and state legislative cases in Louisiana were similarly held hostage to the *Milligan* stay, denying the possibility of relief for 2022.

Sixth District of the African Methodist Episcopal Church v. Kemp (Statewide Voter Suppression Bill). Also in 2021, the ACLU, the ACLU of Georgia, NAACP Legal Defense Fund, Southern Poverty Law Center, and cooperating law firms,¹¹⁴ representing churches and civic organizations including the Sixth District of the African Methodist Church and Delta Sigma Theta Sorority, challenged provisions of Senate Bill 202, Georgia’s 2021 omnibus election law under Section 2, the Civil Rights Act, the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, and the First, Fourteenth, and Fifteenth Amendments. The law made sweeping changes to election administration that make it disproportionately harder for Black Georgians, other Georgians of color, and Georgians with disabilities to vote and have their vote counted. It imposed measures that make it more burdensome to vote absentee or by mail, restricting out-of-precinct voting, drastically reducing the early voting period for runoff elections.

In a particularly callous move, the new law also made it a criminal offense to “give, offer to give, or participate in the giving of . . . food and drink”¹¹⁵ to voters waiting in Georgia’s notoriously long voting lines. The provision—known as the “line relief ban”—applied not only within 150 feet of the polling place but also within 25 feet of any voter standing in line to vote no matter how far the line stretched. Georgia consistently has some of the longest voting lines in the country—a barrier disproportionately borne by Black voters.¹¹⁶ This not only makes the voting process more burdensome, but studies show it can discourage voters from participating in future elections.¹¹⁷ This is one of the scenarios that line relief activities try to counteract with messages of solidarity and community expressed by those providing food and water.

In May 2022, five months before the November election, Plaintiffs moved for a preliminary injunction to enjoin the line relief ban. Although the court concluded that the line relief ban likely violated the First Amendment, it declined to grant preliminary relief because of *Purcell*. The court did ultimately grant the plaintiffs’ subsequent preliminary injunction, filed the next year, blocking the line relief ban for the 2024 election.¹¹⁸ But in the meantime, Georgia conducted elections in 2022—which featured a hotly contested Senate seat, 14 congressional

¹¹⁴ Co-counsel includes partner law firms Wilmer Cutler Pickering Hale and Dorr LLP and Davis Wright Tremaine LLP.

¹¹⁵ Ga. Code Ann. § 21-1-414(a).

¹¹⁶ See Expert Report of Dr. Stephen Pettigrew, In re: Georgia Senate Bill 202, No. 1:21-mi-55555-JPB, ECF No. 535-18 (N.D. Ga.).

¹¹⁷ *Id.*

¹¹⁸ In re *George Senate Bill 202*, No. 1:21-mi-55555-JPB, 2023 WL 5334617 (Aug. 18, 2023).

representatives, and all of Georgia’s executive officers and legislative seats—under a law that surely violates the U.S. Constitution.

North Carolina State Conference of the NAACP v. McCrory (Statewide Voter Suppression Bill). In 2013, along with the Southern Coalition for Social Justice, the ACLU filed a lawsuit representing the League of Women Voters of North Carolina and individual North Carolina voters, in consolidated litigation challenging a sweeping voter suppression bill in North Carolina. Among other things, the bill imposed a strict voter identification requirement, slashed a week of early voting, eliminated same-day registration and pre-registration, and required the invalidation of ballots cast out-of-precinct. The law was announced just hours after the Supreme Court’s decision in *Shelby County*—which released North Carolina from the preclearance regime—and enacted a few short weeks later.

These changes had a tremendous impact on voter access in the state. In the 2012 presidential election alone, approximately 900,000 people voted during the week of early voting that the law eliminated; nearly 100,000 voters registered using same-day registration; approximately 50,000 had pre-registered; and 7,500 cast ballots out of precinct. Not only did the 2013 law eliminate these widely used forms of participation, it also banned the use of many commonly held forms of government-issued photo ID for voting purposes, including North Carolina student IDs, public assistance IDs, and even municipal employee ID cards. In all, every form of registration or voting curtailed or eliminated by the bill had been disproportionately used by Black voters; The only form of voting the ID requirement exempted—absentee voting—was disproportionately used by white voters.

Ultimately, the Fourth Circuit found that the law was enacted with racially discriminatory intent and struck down the challenged provisions as unconstitutional. The court found that in enacting these provisions, the North Carolina legislature “target[ed] African Americans with almost surgical precision.” But the case took 34 months to litigate—almost three years—from complaint to the Fourth Circuit’s ruling. In the interim, the 2014 general election took place under the new law, with 188 federal and state offices elected—including a U.S. Senator, 13 congressional representatives, four state supreme court justices, and 170 state legislative seats.

We did everything we could to prevent this. We litigated this very complex matter on an expedited timeline, and sought a preliminary injunction before the 2014 midterms, which the Fourth Circuit granted. Unfortunately, the Supreme Court stayed that ruling, likely based on the *Purcell* principle—effectively leaving the discriminatory regime in place for the 2014 election. The Supreme Court subsequently permitted that preliminary ruling to go into effect, and plaintiffs ultimately prevailed on the final merits of the case. But even though we did everything in our power to prevent this discriminatory law from tainting the 2014 election, thanks to the demise of preclearance and the expansion of the *Purcell* principle, we lacked adequate tools to do so. And while the law has since been struck down, there is no way to now compensate the Black voters of North Carolina—or our democracy itself—for that gross injustice.

Veasey v. Abbott (Statewide Voter ID Bill). In 2013, civil rights groups filed a lawsuit challenging what was then the nation’s harshest voter identification law, leaving more than 600,000 eligible voters without the required form of ID. The law was originally signed into law in 2011. But when Texas sought to have the law precleared under the pre-*Shelby County* Section

5, it was blocked on grounds that Texas could not show that the law would not discriminate against Black and Latinx voters. Within hours of the *Shelby County* decision, however, Texas, now free from the preclearance process, immediately implemented the requirement.

On October 9, 2014, after a nine-day trial, the district court issued a 143-page opinion that concluded the voter ID law was passed with discriminatory intent and had discriminatory results. The court permanently enjoined the state from enforcing the ID requirement. The full Fifth Circuit, acting *en banc*, eventually affirmed the district court's finding that the voter ID law violated the Voting Rights Act in July 2016. But as in North Carolina, the case took over three years to litigate from complaint filing to appellate ruling. In the interim, the 2014 general elections were held with the voter ID requirement in place. In those elections, Texas voters filled an open governor's seat, voted for six other statewide officeholders, and elected all 36 members of the state's congressional delegation, all 150 members of the state house, and half of the state senate. Moreover, the voter ID requirement was still in place for the 2016 primary, including a contested presidential primary in both major parties, as well a 2015 election to approve seven proposed constitutional amendments. All told, more than 11 million ballots were cast under a discriminatory election regime.

As in North Carolina, the plaintiffs did everything they could. They sued the day after the Governor announced the law's implementation and moved expeditiously to resolve the case on its merits. In contrast to many of the applications for urgent relief discussed here, this case had opportunity for a full hearing of the claims and evidence, with dozens of witnesses testifying. Nevertheless, the Fifth Circuit stayed the injunction, "based primarily on the extremely fast-approaching election date," *i.e.*, because of *Purcell*. When the plaintiffs asked the Supreme Court to vacate the stay, it declined to do so—presumably also on the basis of *Purcell*.

Notably, nothing in the Fifth Circuit's stay order in any way contradicted the district court's finding that the law was passed with discriminatory intent and had discriminatory results. In other words, the appellate court concluded that proper application of the *Purcell* doctrine required it to allow a law found to be "motivated, at the very least in part, *because of* and not merely *in spite of* . . . detrimental effects on the African-American and Hispanic electorate" to govern the conduct of federal elections. The Texas plaintiffs did everything they could to prevent this discriminatory law from tainting the 2014 election, but thanks once again to the demise of preclearance and the expansion of the *Purcell* principle, over 200 federal and state officials in Texas were elected under a regime the full Fifth Circuit would affirm as "impos[ing] significant and disparate burdens on the right to vote" and as "ha[ving] a discriminatory effect on minorities' voting rights in violation of Section 2 of the [VRA]."¹¹⁹

Husted v. Ohio State Conference of the NAACP (Cuts to Early Voting). In May 2014, we filed a lawsuit representing the Ohio chapters of the NAACP, the League of Women Voters, the A. Philip Randolph Institute, and various churches and other organizations, challenging an Ohio law that sharply cut the availability of early voting passed in the wake of the surge in turnout during the 2012 presidential election. These cuts disproportionately impacted Black Ohio

¹¹⁹ *Veasey v. Abbott*, 830 F.3d 216, 265 (5th Cir. 2016).

voters, who not only relied more heavily on early voting than white voters but also relied more heavily on Sunday voting, which the law eliminated.

In June 2014, just one month after we filed suit and three and a half months after the law was enacted, we moved for a preliminary injunction, submitting voluminous documents to support our claims, including several expert reports, extensive briefing, and hundreds of pages of exhibits. In a thorough opinion, weighing the competing evidence proffered by the state to defend the practice, the district court found that we had shown that the law was substantially likely to violate the Constitution and Section 2, and on September 4, 2014 (weeks in advance of the early voting period) issued a preliminary injunction mandating that early voting go forward without the state's cuts. The state appealed, and after emergency briefing, on September 24, the Sixth Circuit affirmed the injunction, finding, in a similarly thorough opinion, that the plaintiffs were likely to succeed on their VRA and constitutional arguments.

Despite these findings on the merits, the Supreme Court stayed the injunction in a five to four vote—presumably on the basis of *Purcell*—just sixteen hours before early voting was to begin. In contrast to the opinions of the lower courts, setting out detailed findings of fact and conclusions of law, the Supreme Court's stay was three sentences long, giving no clarity on what, precisely, it disagreed with or how the courts below had erred. The case ultimately settled, with the state agreeing to restore some of the reduced early voting opportunities.

In the meantime, however, the 2014 general election went forward with the early voting cuts in place, with religious and community organizations scrambling to communicate the changes and to arrange transportation for their members. As Reverend Todd Davidson, of the Antioch Baptist Church in Cleveland noted, “[b]ecause of the last-minute decision by the [Supreme C]ourt, [his church] was forced to hold off on their advertising because they did not want to give incorrect information.” The settlement, moreover, did not take effect until after primary elections in 2015. All told, over one hundred federal and state officials, including the state's governor, lieutenant governor, and secretary of state, were elected and over three million ballots were cast under a regime that two levels of the federal court system had concluded would likely violate the U.S. Constitution and the VRA—based solely on the *Purcell* principle.

IV. Continuing Attacks on Section 2 and its Effectiveness.

Compounding the limitations of litigating voting rights challenges *after* a law's enactment, attacks on Section 2 itself since *Shelby County* make the need to pass a restored and strengthened VRA even more urgent.

Since *Shelby County*, the Supreme Court has chipped away further at Section 2's protections—most notably, in *Brnovich v. Democratic National Committee*. *Brnovich*, decided in 2021,¹²⁰ was the Supreme Court's first attempt to interpret vote denial/abridgement claims rather than vote dilution claims since the 1982 Amendments, the Court weakened federal protections for voting rights even further. The case concerned two Arizona restrictions that had disproportionate impacts on Native American communities and other communities of color, which the plaintiffs challenged as violating Section 2: a ban on the collection of early ballots and

¹²⁰ 141 S. Ct. 2321 (2021).

a rule mandating that ballots cast in person at the wrong precinct be discarded entirely, rather than counted for the offices for which that voter is eligible to vote.¹²¹ In the decision, which reversed an en banc panel of the Ninth Circuit, the Supreme Court set out five so-called “guideposts” to assess Section 2 “vote denial” claims. These guideposts were untethered to the actual text of the statute.¹²² The decision and these guideposts make bringing successful Section 2 claims more difficult.

The Court’s decision in *Brnovich* undermined Section 2’s purpose of providing “the broadest possible scope in combating racial discrimination,”¹²³ and limited what Justice Scalia called a “powerful, albeit sometimes blunt, weapon with which to attack even the most subtle forms of discrimination.”¹²⁴ In particular, the Court’s decision did two things to make Section 2 claims harder to win.

First, the Court ratcheted up the bar for plaintiffs to establish a discriminatory burden on the right to vote by introducing less-protective and already-weakened constitutional standards into this statute. Section 2 calls for an inquiry based on “the totality of the circumstances,” into whether “political processes . . . are not equally open” to people of color¹²⁵—or, in other words, whether a practice imposes a burden on voters of color. *Brnovich* changed this inquiry. Going forward, the question is whether the burden imposed by a challenged practice is, in a court’s view, akin to the “usual burdens of voting,” finding those to be essentially per se permissible under Section 2.¹²⁶ Absent from the analysis is a discussion of whether the so-called “usual” burdens of voting are equally burdensome to all voters, particularly to voters of different racial groups. Though the decision refers to “mere inconvenience,” the difficulty of, say, driving to a mail box is very different on a remote Native American reservation where residents do not receive postal service at their doors, and are also much less likely to have access to cars than it is for other voters.¹²⁷ The Court also found relevant “the degree to which a voting rule departs from

¹²¹ *Id.* at 2330.

¹²² *See id.* at 2338–40.

¹²³ *Chisom v. Roemer*, 501 U.S. 380, 403 (1991) (internal quotation marks & citation omitted).

¹²⁴ *Id.* at 406 (Scalia, J., dissenting); *see, e.g., Hearing on the Implications of Brnovich v. Democratic National Committee and Potential Legislative Responses, Hearing Before the Subcomm. on the Constitution, Civil Rights, and Civil Liberties of the H. Comm. on the Judiciary*, 117th Cong. 2 (2021) (statement of Sean Morales-Doyle, Acting Director, Voting Rights and Elections Program, Brennan Center for Justice) (“In its opinion in *Brnovich*, the Court’s majority ignores the clear intention of Congress in crafting Section 2: to provide a powerful tool to root out race discrimination in voting and representation.”); *id.* (statement of Ezra Rosenberg, Co-Director, Voting Rights Project, Lawyers Committee for Civil Rights Under Law) (“[*Brnovich*] unnecessarily and unreasonably makes it more difficult for civil rights plaintiffs to win Section 2 actions And it does so in a way that flies in the face of congressional intent. Further, it raises too many ambiguities in too many important areas to leave it to the courts to fill in the blanks.”); *Hearing on Restoring the Voting Rights Act after Brnovich and Shelby County, Hearing Before the Subcomm. on the Constitution of the S. Committee on the Judiciary*, 117th Cong. (2021) (statement of Janai Nelson, Associate Director Counsel, NAACP Legal Defense and Educational Fund, Inc.) (“The [*Brnovich*] decision improperly and illogically departs from the plain text of Section 2, ignores settled precedent, and curtails the broad application of Section 2 that Congress intended, thus making it more difficult and burdensome to ensure that every eligible citizen is able to freely exercise their right to vote.”).

¹²⁵ 52 U.S.C. § 10301(b).

¹²⁶ 141 S. Ct. at 2338 (quoting *Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 198 (2008)).

¹²⁷ *Id.*

what was standard practice . . . in 1982.”¹²⁸ But this ignores that the reauthorization of the VRA in 1982, just as in 1965, was motivated by a desire to *change* state election rules and eradicate the racially discriminatory measures that remained—not grandfather them into law.¹²⁹ By introducing these irrelevant considerations into the Section 2 analysis, *Brnovich* makes it more difficult for plaintiffs to prove their cases.

Second, the Court also ratcheted down the bar for jurisdictions to defend restrictions on voting with a disparate impact. In particular, *Brnovich* imports into this inquiry—without any grounding in text or history—a state’s asserted interest in preventing election fraud and does so by placing a heavy thumb on the scale in the state’s favor. Even when wholly unsubstantiated with actual evidence, which it gratuitously referred to as “strong and entirely legitimate,” the Court concluded that rules justified with reference to these interests are “less likely to violate § 2.”¹³⁰ The lower court in *Brnovich* found the offered justification of voter fraud for the ban on ballot collection—particularly important to Native American communities, who often lack adequate transportation or regular postal service—to be tenuous, due to the utter absence of voter fraud in Arizona.¹³¹ On this point, the Supreme Court again disagreed, and went further: holding that states are under no obligation to provide any evidence of an actual history or risk of fraud within their borders, or to show how a challenged rule actually would prevent election fraud.¹³²

Beyond *Brnovich*, Section 2 faces continued attacks by jurisdictions and groups hostile to racial justice by resurfacing arguments long settled. For example, in a Section 2 case challenging Arkansas’ state legislative districts, a federal judge became the first in the nation to depart from 60 years of precedent, including from the Supreme Court,¹³³ and practice that private individuals and organizations (i.e., not just the Department of Justice) can bring lawsuits under Section 2 of the VRA.¹³⁴ Indeed, private plaintiffs have brought the vast majority of successful Section 2 cases; decisions in hundreds of Section 2 cases brought by private plaintiffs alone, including numerous Supreme Court decisions, have granted relief to private individuals. The counter-textual, ahistorical analysis the court used to leap over prior precedent and congressional intent to reach this conclusion was particularly shocking because Arkansas did not argue the issue and the court decided to raise it on its own. Even more shocking was the Eighth Circuit Court of Appeals’ panel’s affirmance of this decision in a 2-1 ruling over the strong dissent of

¹²⁸ *Id.*

¹²⁹ S. Rep. No. 97-417, 54 & n.184 (1982) (describing the widespread use of practices such as “restrictive registration, multi-member and at-large districts with majority vote-runoff requirements, prohibitions on single-shot voting and others” in covered jurisdictions and characterizing them as “tend[ing] to [be] discriminatory in the particular circumstances”).

¹³⁰ *Brnovich*, 141 S. Ct. at 2340.

¹³¹ See *Democratic Nat’l Comm. v. Hobbs*, 948 F.3d 989, 1035 (9th Cir. 2020) (en banc) (“No one has ever found a case of voter fraud connected to third-party ballot collection in Arizona. This has not been for want of trying.”).

¹³² *Brnovich*, 141 S. Ct. at 2348.

¹³³ *Morse v. Republican Party of Va.*, 517 U.S. 186, 231–32 (1986); *Allen v. State Bd. of Elections*, 393 U.S. 544, 557 (1969).

¹³⁴ See *Ark. State Conf. NAACP v. Ark. Bd. of Apportionment*, 586 F. Supp. 3d 893, 911 (E.D. Ark. 2022), *aff’d*, 86 F.4th 1204 (8th Cir. 2023).

Chief Judge Smith,¹³⁵ and the full court’s refusal to reconsider the dissent of three judges.¹³⁶ As one of those judges, Judge Colloton, explained, the “panel should not have even reached this issue of national significance,” and in declining to rehear the case, the full Eighth Circuit “regrettably misse[d] an opportunity to reaffirm its role as a dispassionate arbiter.”¹³⁷ While this decision did not address whether private plaintiffs are able to vindicate their rights under Section 2 under an alternative route, using 42 U.S.C. § 1983, this route too is currently being challenged.¹³⁸

In another brazen attack to weaken Section 2 of the VRA, the full Fifth Circuit Court of Appeals chose to reconsider its own prior rulings that different groups of color who shared similar voting patterns and issues of discrimination could bring a “coalition district claim” under Section 2 and stayed a trial court ruling that the prior Fifth Circuit panel had recognized was well-supported by its own precedent.¹³⁹

Even Justice Kavanaugh, who was in the *Milligan* majority, did not foreclose entertaining at a later date the argument raised by Justice Thomas “that even if Congress in 1982 could constitutionally authorize race-based redistricting under § 2 for some period of time, the authority to conduct race-based redistricting cannot extend indefinitely into the future.”¹⁴⁰ Thus, even in the context of this important reaffirmance of Section 2’s viability, the sword of Damocles makes an appearance.

Considering these foundational attacks on Section 2 itself, voters of color cannot be expected to put all their eggs in the basket of a provision so consistently under attack from multiple angles.

Conclusion

The need for restored and strengthened voting rights protections is impossible to overstate. If the aftermath of the 2020 elections teaches us anything, it is that this is a perilous time for our democracy. We must come together to ensure its vitality for another 250 years. But we lack the tools to combat the kind of tenacious racial discrimination in voting that continues to threaten our democracy’s health.

While Section 2 is an important tool, it too has been weakened by recent Supreme Court cases. It also faces an onslaught of attacks that threaten to further undermine its effectiveness. Section 2 cases, moreover, by definition *react* to already-implemented changes. They are time- and resource-intensive and difficult to litigate: often requiring experts and extensive briefing. Far too frequently, this results in elections being held under regimes that are later struck down as

¹³⁵ *Ark. State Conf. NAACP v. Ark. Bd. of Apportionment*, 86 F.4th 1204 (8th Cir. 2023).

¹³⁶ *Ark. State Conf. NAACP v. Ark. Bd. of Apportionment*, 91 F.4th 967 (8th Cir. 2024) (en banc).

¹³⁷ *Id.* at 969–70; 974 (Colloton, J., dissenting).

¹³⁸ *Turtle Mountain Band of Chippewa Indians v. Howe*, No. 23-3655, Br. of Def.-Appellant (8th Cir. Jan. 30, 2024).

¹³⁹ *Petteway v. Galveston Cnty., Texas*, 87 F.4th 721, 723 (5th Cir. 2023) (en banc).

¹⁴⁰ *Allen v. Milligan*, 599 U.S. 1, 45 (2023).

racially discriminatory, forever tainting those elections and irreparably damaging the right to vote.

The contemporary application of the *Purcell* “principle,” which has metastasized into a per-se ban on federal courts enjoining voting-related laws in the months before an election, has exacerbated this harm. In contrast, the preclearance regime under the VRA—which operated for decades—allowed the federal government to nimbly protect the right to vote, blocking discriminatory changes to election rules before they went into effect and became much more difficult to undo. Importantly, state actors subject to preclearance also benefit from the process: case-by-case, after-the-fact voting rights litigation is expensive for defendants, just as it is for civil rights plaintiffs.

Congress has the power to act and the responsibility, under the Constitution, to ensure that the right to vote is not abridged. The Fourteenth and Fifteenth Amendments to the U.S. Constitution guarantee citizens the right to due process and equal protection under law, and the right to vote free from disenfranchisement on the basis of race, respectively.¹⁴¹ Both of these amendments also unambiguously empower Congress to enforce their guarantees.¹⁴² If other institutions tasked with protecting constitutional rights, such as the court system and state governments, fail to live up to their duties, this body must intervene.

Thank you again for the opportunity to testify in front of this Committee on these important issues.

¹⁴¹ U.S. Const. amends. XIV, XV.

¹⁴² U.S. Const. amends. XIV § 5, XV § 2.

**Testimony Before the Senate Judiciary Committee
“The Right Side of History: Protecting Voting Rights in America”**

March 12, 2024

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

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

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

Tremendous Power to Unelected Partisan Bureaucrats

If passed, the proposed Act will once again give tremendous power over the election procedures of every state and locality to partisan bureaucrats within the Voting Section. I have watched this power abused firsthand. I would like to share with you some of my experiences working in the Voting Section.

I began my employment in the Voting Section approximately 3 months prior to the 2000 Presidential election. When the Florida recount occurred, I personally observed Voting Section staff discussing strategies to assist the DNC in Florida and

observed several staff members receiving and sending faxes to Democratic National Committee and Gore campaign operatives in Florida.

I also witnessed twisted racialism. When George W. Bush appointed Ralph Boyd, an African American, to head the Civil Rights Division, I often heard from career Voting Section attorneys “he’s not really black”, adding that “no self-respecting Black man would be a Republican. These statements were accepted beliefs among many.

I would urge every senator here to read the DOJ Inspector General Report entitled, “A Review of the Operation of the Voting Section of the Civil Rights Division.” I have provided a link to the report in footnote 1. It provides instance after instance of bad behavior – often racially motivated – among section staff.

For example, when the Voting Section brought an action against an African American named Ike Brown, in Noxubee County Mississippi, to protect minority white voters, these partisan bureaucrats disagreed with the filing of the case and were hostile to it throughout the prosecution of the case. They engaged in unspeakable abuse of an African American paralegal deemed “not black enough” because he dared to work on the Noxubee County case. When you finish reading the report,

you will rightfully ask whether allowing this office to wield so much power over every election again, is wise.¹

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

History of Abuses and Sanctions

The Voting Section has a long record of abuse by its lawyers. Their improper collaboration while reviewing Section 5 submissions has been sanctioned by courts.

Between 1993 and 2000, the Voting Section has been sanctioned \$2,358,687.31 For example, in *Johnson v. Miller* (864 F. Supp. 1354, 1364 (S.D. Ga. 1994)), the United States District Court sanctioned the Voting Section \$594,000 for collusive misconduct by DOJ Voting Section lawyers. Working in tandem with attorneys from the ACLU, the Department denied preclearance to the State of Georgia's redistricting plan on three separate instances. During this process, it

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<https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwib5dKmlbrxAhVBG80KHRquAv4QFjABegQIBRAD&url=https%3A%2F%2Ffig.justice.gov%2Freports%2F2013%2Fs1303.pdf&usg=AOvVaw09dTbH3E3cEhHWZFMl48bw>

became clear to the State of Georgia that to receive preclearance from DOJ it would be required to adopt the plan favored by the DOJ and prepared by the ACLU. The plan by the ACLU was designed to maximize minority districts; something not required under Section 5's retrogression standard. Desperate for pre-clearance, Georgia adopted a plan essentially identical to that proposed by the ACLU. Of course, that plan received preclearance from the DOJ Voting Section. But the state was again sued because the legislature's dominant motivation in adopting the plan was based upon race, i.e. the dominant motivation in its creation was to maximize minority districts to obtain preclearance. The district court determined that the plan violated the 14th Amendment. Moreover, the federal district court noted that the ACLU was "in constant contact with the DOJ line attorneys." Pronouncing the communications between the DOJ and the ACLU "disturbing," the court declared, "It is obvious from a review of the materials that [the ACLU attorneys'] relationship with the DOJ Voting Section was informal and familiar; the dynamics were that of peers working together, not of an advocate submitting proposals to higher authorities." After a Voting Section lawyer professed that she could not remember details about the relationship, the court found her "professed amnesia" to be "less than credible." However, such abuse of power in the Section 5 process is not confined to *Johnson v. Miller*.

Despite the history of sanction for this collusive conduct, on more than one occasion I was instructed to contact and share information with advocacy groups including the ACLU when reviewing a submission for preclearance.

As recently as May 2013, the Justice Department Voting Section used the Section 5 process to extract legally indefensible concessions from states that a federal court would never impose. In places like Rock Hill, South Carolina, the Voting Section permitted blatantly unconstitutional district lines to survive to prop up the electoral success of multiple election officials based on their race.

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

The Town of North, South Carolina, submitted an annexation of two white homeowners to the city limits for pre-clearance. The white homeowners had requested annexation to the Town to obtain water and sewer. The Department

objected to the annexation, because the Town could not show that any African Americans had been annexed, despite their never having submitted a qualifying request for annexation. Furthermore, Congress relied on some of these meritless objections when it reauthorized Section 5 in 2006. These abusive and meritless objections polluted the record in 2006, but no plaintiff ever challenged them, and Congress took no testimony regarding their merits.

During a review of a statewide redistricting plan, I personally became aware of a demand made by the Front office to target the district of a white state legislator in South Carolina. The legislator represented a district with a large African American population. What did this State Senator do to incur the wrath of the Front office? One, he was a Republican. Two, he sponsored local legislation in response to requests from his minority constituents to bring accountability to a local school board, the majority of whom were African American. The school board was under investigation for misuse of funds and had fired 9 of the last 10 Superintendents. The school district was failing its students, the majority of whom were African American, and was rated second from last of all South Carolina' public schools. The local legislation proposed a fiscal review mechanism to monitor the board's spending. It also provided for the addition of two additional African American board members. The legislation was supported by the parents of the minority students. Unfortunately, the Front office backed the school board and issued an Objection to the changes. It

subsequently sought to punish the local Senator when the State submitted its redistricting plan for preclearance.

Practice Based Preclearance Triggers.

The proposed practice-based preclearance triggers will require most electoral changes to be submitted despite the inconsequential nature of the change. For example, a polling place change does not just include a change in physical address. It includes ANY change to the polling place. If a polling place is moved from the high school gym to its cafeteria, the change must be submitted for pre-clearance. Changes to election materials include changes in the design of the jurisdiction's polling signage. Simply changing the size of the signs/posters or the font would have to be cleared. A change to the location of the local registrar from the old city hall to the new city hall literally across the street will need to be submitted for pre-clearance. Election administration is difficult enough without the burdensome requirements proposed in the Act.

Notice Requirements Overly Burdensome

The new notice requirements will paralyze jurisdictions, especially those with limited resources. Many do not even have websites. They already have an extremely difficult time finding polling places and staffing them with poll workers. To require the posting of all the information required in the Act will change their focus from ensuring voter access to posting website materials and numbers.

Preclearance is not necessary in 2024

Section 5 was a temporary provision for a reason that no longer exists. The Supreme Court in *Shelby* not only determined that the formula for Section 5 coverage was unconstitutional, but it also questioned the justification for Section 5 in today's world. It made clear that only certain conditions would justify *any formula* for Section 5 coverage today. Among the touchstones listed by the Court are “blatantly discriminatory evasions of federal decrees,” lack of minority office holding, tests and devices, “voting discrimination ‘on a pervasive scale,’” “flagrant” voting discrimination, or “rampant” voting discrimination. Such discrimination does not exist today. Indeed, this Committee could look long and hard and not find a single evasion of a federal decree – the central assumption of why preclearance was needed in 1965.

As the Supreme Court stated “Federal intrusion into the powers reserved by the Constitution to the States must relate to these empirical circumstances. Triggers that are built around political or partisan goals will not withstand Constitutional scrutiny.

Prior weaponization of the Retrogression Standard

The Department already has a history of weaponizing the retrogression standard. They resort to the use of miniscule statistical differences between white and non-whites when evaluating a proposed law's effect on minority voters. The

Department's objection to South Carolina's proposed voter ID legislation is a perfect illustration of this tactic. The Department compared the rates of white and non-white voters' possession of photo ID. It was found that white voters were 1.6% more likely than non-white voters to have a photo ID. A 1.6 % difference prevented the State of South Carolina from implementing the law and protecting the integrity of their elections. This is exactly the federal intrusion the *Shelby* decision was designed to prevent.

Moreover, this Act would add the "retrogression standard" to Section 2, despite the lack of need and the blatant federal overreach. The current attempts to use the retrogression standard disguised as a claim under Section 2 were rejected by the Supreme Court in the *Brnovich* decision. See (J. Christian Adams, *Transformation: Turning Section 2 of the Voting Rights Act into Something It Is Not*, Volume 31, *Touro Law Review* 2015)

Coverage Formula Will Not Survive Judicial Scrutiny

Furthermore, the proposed formula would subject jurisdictions to Section 5 preclearance who have violations occurring within the last 25 years. Obviously 25 years ago there were only certain states that were covered by the VRA Section 5 preclearance. It is only logical that those states who were under the auspices of preclearance and were required to submit ANY change in voting under Section 5 are

more likely to have a history of violations than states who were never covered. The proposed formula is unlikely to withstand judicial scrutiny.

Covered Practices

The covered practices portion of the proposed Act is destined to result in the targeting of specific states. During my employment it became obvious that Section 5 submissions by certain jurisdictions received heightened scrutiny by Voting Section staff and leadership. Often jurisdictions were targeted because their politics did not align with the Sections' unelected bureaucrats. Southern and rural jurisdictions were often described in derogatory terms. This bias was not only evident in conversations among staff, but also illustrated boldly within the office. There were signs that read "mess with Texas" on staff doors, photographs of favored political candidates for President were boldly hung in offices. The day after the presidential election in 2008, the official portrait of President George W. Bush, was shattered and a small photo of Barack Obama was taped to the destroyed glass. Trust me, this sentiment and targeting will occur again.

Tools Exist to Stop Discrimination

Permanent provisions of the Voting Rights Act such as the current version of Section 2 still prohibit discrimination and provide the Justice Department with the

ability to challenge election procedures. Since the *Shelby County* decision in 2013, the Department has only brought 9 Section 2 lawsuits. That's not even 1 a year! If rampant discrimination in voting exists why has DOJ not brought cases challenging these ills?

Section 3(c) the "bail in provision", allows a judge to order a state or subdivision to submit to the preclearance provisions, if it finds that the jurisdiction intentionally discriminated against minority voters. It is also consistent with the *Shelby* mandate that federal oversight of state or local elections be closely matched by need. The new allowable triggers do not require a showing of intentional discrimination and are inconsistent with permissible federal oversight as outlined in the *Shelby* decision.

New Preliminary Injunction Standards

The proposed "evidentiary standard" for obtaining a preliminary injunction sets federal law on its head. The Supreme Court has held that a plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest. *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 20, (2008). The Court further noted that because a preliminary injunction is such an extraordinary remedy, it is NEVER awarded as a right, and that courts should pay particular regard

for the public interest. *Winter* at 24. The new standard contained in the Act essentially disregards the public interest held by the State. It limits the courts' consideration of the jurisdiction's interest and the considerations enumerated in the *Purcell* doctrine.

The changes clearly tip the scale in favor of the Plaintiff and against the jurisdiction. When a jurisdiction is sued over an election law and a plaintiff's request for a preliminary injunction is denied, then during the pendency of the litigation elections move forward under the proposed law. The litigated laws implementation often demonstrates that the proposed law has NO discriminatory effect. This of course is relevant evidence to the proclaimed discriminatory effect of the litigated voting change. These proposed changes will not only limit the jurisdiction's ability to oppose a preliminary injunction, but it will also necessarily prevent a state from showing in real time that the proposed law has no discriminatory effect.

Thank you for your time and attention.



CONGRESSIONAL TESTIMONY

“The Right Side of History: Protecting Voting Rights in America”

**Testimony before the
Committee on the Judiciary**

United States Senate

March 12, 2024

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Introduction

My name is Hans A. von Spakovsky.¹ I appreciate the invitation to be here today. I am a Senior Legal Fellow and Manager of the Election Law Reform Initiative in the Center for Legal and Judicial Studies at The Heritage Foundation. Prior to joining The Heritage Foundation, I was a Commissioner on the U.S. Federal Election Commission for two years. Before that I spent four years at the U.S. Department of Justice as a career civil service lawyer in the Civil Rights Division, where I received three Meritorious Service Awards (2003, 2004, and 2005). I began my tenure at the Justice Department as a trial attorney in 2001 and was promoted to be Counsel to the Assistant Attorney General for Civil Rights (2002-2005), where I helped coordinate the enforcement of federal voting rights laws, including the Voting Rights Act, the National Voter Registration Act, the Help America Vote Act, and the Uniformed and Overseas Citizens Absentee Voting Act.²

There Is No Need for Legislative Reforms

The John R. Lewis Voting Rights Advancement Act, S. 4, is an unjustified and unneeded amendment whose broad expansion of the Voting Rights Act of 1965 (“VRA”), including the reimposition of the preclearance requirements of Section 5 of the VRA, would call into question the constitutionality of the law. The VRA is one of the most important – and most successful – statutes ever passed by Congress to guarantee the right to vote free of discrimination. After the U.S. Supreme Court’s correct decision in *Shelby County v. Holder* in 2013,³ the VRA through its various provisions, including Section 2, remains a powerful statute whose remedies are more than sufficient to protect all Americans.

With the guidance provided by the U.S. Supreme Court on the proper application of Section 2 to discriminatory practices in *Brnovich v. DNC*,⁴ both the U.S. Justice Department and private

¹ The title and affiliation are for identification purposes. Members of The Heritage Foundation staff testify as individuals discussing their own independent research. The views expressed here are my own and do not reflect an institutional position for The Heritage Foundation or its board of trustees. The Heritage Foundation is a public policy, research, and educational organization recognized as exempt under section 501(c)(3) of the Internal Revenue Code. It is privately supported and receives no funds from any government at any level, nor does it perform any government or other contract work. The Heritage Foundation is the most broadly supported think tank in the United States. During 2020, it had hundreds of thousands of individual, foundation, and corporate supporters representing every state in the U.S. Its 2020 operating income came from the following sources: Individuals 66%, Foundations 18%, Corporations 2%, Program revenue and other income 14%. The top five corporate givers provided The Heritage Foundation with 1% of its 2020 income. The Heritage Foundation’s books are audited annually by the national accounting firm of RSM US, LLP.

² I was also a member of the first Board of Advisors of the U.S. Election Assistance Commission. I spent five years in Atlanta, Georgia, on the Fulton County Board of Registration and Elections, which is responsible for administering elections in the largest county in Georgia. In Virginia, I served for three years as the Vice Chairman of the Fairfax County Electoral Board, which administers elections in the largest county in that state. I formerly served on the Virginia Advisory Board to the U.S. Commission on Civil Rights. I am a 1984 graduate of the Vanderbilt University School of Law and received a B.S. from the Massachusetts Institute of Technology in 1981.

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

⁴ *Brnovich v. Democratic National Committee*, 594 U.S. ____ (2021).

parties have the legal means at their disposal to stop those increasingly rare instances of voting discrimination when they occur.

There Is No Wave of “Voter Suppression” Occurring

The claim that there is a wave of voter suppression going on across the country that requires expansion of the VRA is simply false. Efforts to enhance the integrity of the election process through reforms such as voter identification requirements and improvements in the accuracy of statewide voter registration lists are not voter suppression.

On voter ID, for example, the data is clear that such a requirement does not prevent any eligible individuals from voting and yet the proposed legislative reforms treat it as a suspect, discriminatory practice. A 2019 survey by the National Bureau of Economic Research of ten years of turnout data from all fifty states found that state voter ID laws “have no negative effect on registration or turnout, overall or for any group defined by race, gender, age, or party affiliation.”⁵ Voter ID laws are in place in numerous states like Indiana, Georgia, Alabama, Tennessee, South Carolina, Wisconsin, Kansas, Arkansas, Mississippi, and Texas because courts ruled they are not discriminatory and do not represent a tangible burden on voters.

We have also seen evidence of this in the steady increases in registration and turnout in states that have implemented much-needed election reforms intended to improve access, integrity, and security, as well as in the steady *decrease* in the number of enforcement cases being brought by the Justice Department due to a decreasing number of violations of federal law, even after the 2013 *Shelby County* decision.

I explained this in greater detail in a 2019 law review article, “The Myth of Voter Suppression and the Enforcement Record of the Obama Administration.”⁶ For example, during the entire eight years of the Obama administration, the Civil Rights Division of the Justice Department filed only four cases to enforce Section 2 of the VRA. The Trump Administration filed two Section 2 enforcement actions.

In short, there was no upsurge in Section 2 cases after the *Shelby County* decision; in fact, the Obama Administration filed far *fewer* Section 2 enforcement actions than the Bush Administration, which filed 16 such cases. The record over the past two decades, and particularly in the last ten years, provides no evidence to support the claim, which has been asserted many times, that there are widespread, systematic, unlawful voter suppression actions being taken against minority voters by state and local jurisdictions.

As the Supreme Court outlined in 2013 in *Shelby County*, the original conditions that

⁵ Enrico Cantoni and Vincent Ponsi, “Strict Voter ID Laws Don’t Stop Voters: Evidence From a U.S. Nationwide Panel, 2008-2018, National Bureau of Economic Research, Working Paper No. 25522 (Feb. 2019, Revised May 2021).

⁶ Hans A. von Spakovsky, “The Myth of Voter Suppression and the Enforcement Record of the Obama Administration,” 49 U. Mem. L. Rev. 1447 (2018-2019).

justified the preclearance requirement no longer existed; in fact, the turnout of minority voters in the covered jurisdictions was higher than white turnout in “five of the six States originally covered by Section 5, with a gap in the sixth State of less than one half of one percent.”⁷ No one disputes that Section 5 was needed in 1965. But in the same way that the Supreme Court did, we must all recognize that time has not stood still, and “[n]early 50 years later, things have changed dramatically.”⁸

This can also be seen in Census Bureau reports on registration and turnout in the subsequent federal elections after the 2013 decision in *Shelby County*. The Bureau’s report on the 2012 election showed that black Americans voted at a higher rate than whites nationally (66.2% vs. 64.1%).⁹ Other examples abound. According to the Census Bureau’s reports (found in Tables 4a) for the 2016, 2018, and 2020 elections, Mississippi, a formerly covered state, had a higher overall turnout of citizen voters than Connecticut, New York, and Delaware. The turnout, respectively, for Mississippi was 67.7%, 54.2%, and 70.3% in each election. The citizen turnout in the other three states according to the Census Bureau was less for each election year:

Connecticut – 63.9% (2016); 54% (2018); and 66.6% (2020)

New York – 57.2% (2016); 49.5% (2018); and 64.7% (2020)

Delaware – 62.3% (2016); 51.8% (2018); and 67.7% (2020)

Moreover, the turnout of black citizens (“alone” per the Census category as outlined in Table 4b) exceeded that of whites “alone” in Mississippi in each of those elections. The same cannot be said for Connecticut, New York, and Delaware, in which the percentage of white voter exceeded that of blacks in some elections, while the reverse was true in others. Georgia, a formerly covered state, also had a higher overall percentage of turnout of its citizens according to the Census reports than New York in the 2016, 2018, and 2020 elections, and the turnout percentage of black citizens was also higher in Georgia in the 2018 (59.6%) and 2020 (64%) elections than in New York in both elections (51.3% and 62.7%).

A survey in Georgia after the 2022 election shows that the critics of the state’s 2021 election reforms that were intended to protect the security and integrity of the election process for Georgia voters were wrong when they claimed it would “suppress” votes, particularly of minority voters.¹⁰ The survey by the Survey Research Center of the School of Public & International Affairs at the University of Georgia found that precisely 0% of black voters said that they had a poor experience voting in 2022. In fact, 96.2% of black voters said their voting experience was “excellent” or “good,” compared to 96% of whites, a statistically insignificant difference.

⁷ *Shelby County*, 570 U.S. at 535.

⁸ *Shelby County*, 570 U.S. at 547.

⁹ Thom File, U.S. Census Bureau, “The Diversifying Electorate – Voting Rates by Race and Hispanic Origin in 2012 (and Other Recent Elections) 3 (2013).

¹⁰ “2022 Georgia Post-Election Survey,” Survey Research Center, School of Public & International Affairs, University of Georgia (Jan. 17, 2023).

Moreover, when asked to compare their voting experience in 2022 in comparison to 2020, over 19% of black voters said their voting experience was “easier” and 72.5% said there was “no difference,” for a total of 91.6%. That compares to 13.3% of white voters who said they had an “easier” experience in 2022 and 80.1% said they saw “no difference,” for a total of 93.4%. Once again, we have a statistically insignificant difference between the stated experiences of black and white voters – except that a larger percentage of black voters than white voters reported that their voting experience actually was easier after the state implemented the new procedures. According to the Pew Research Center, Georgians cast “more votes” in 2022 than in “any other midterm” election in its history, with black voters making up 48% of the increase since 2000.¹¹

The Census Bureau’s recent release of its 2020 election survey of voter turnout also clearly demonstrates that there has been no wave of “voter suppression” keeping American voters from registering and voting or that requires amending the VRA and expanding the power of the Justice Department.¹²

Instead, the Census Bureau reports that the turnout in the 2020 election was 66.8 percent – just short of the record turnout of 67.7 percent of voting-age citizens for the 1992 election. This was higher than the turnout in President Barack Obama’s first election, which was reported as 63.6 percent by the Census Bureau.

The Census survey shows that there was higher turnout among all races in 2020 when compared to the 2016 election. Black Americans turned out at 63 percent, compared to only 60 percent in 2016. Fifty-nine percent of Asian Americans voted in 2020, a 10-percentage point increase from 2016 when 49 percent turned out to vote.

The Census Bureau reports that voter registration in 2020 reached 72.7 percent, which is higher than the 70.3 percent who registered in 2016 after eight years of the Obama-Biden administration. Not only that, but voter registration in 2020 was higher than in the 2000, 2004, 2008 and 2012 elections.

Hispanics made up 11 percent of the total turnout in the 2020 election, up from only nine percent in 2016. The Hispanic share of the vote was just behind that of Black Americans, who had 12 percent of the total vote in 2020 – the same percentage of the total vote by Black Americans in the 2016 election at the end of the Obama-Biden administration.

As outlined in a recent Heritage Legal Memorandum, “Tenth Anniversary of Shelby County: Cause for Celebration,” the registration and turnout rates in the states formerly under the

¹¹ Abby Budiman and Luis Noe-Bustamante, “Black eligible voters have accounted for nearly half of Georgia electorate’s growth since 2000,” Pew Research Center (Dec. 15, 2020).

¹² “2020 Presidential Election Voting and Registration Tables Now Available,” U.S. Census Bureau, Press Release (April 29, 2021).

preclearance requirements of Section 5 of the VRA have continued to have registration and turnout rates far above the low rates the Congress determined were a symptom of discrimination when it passed the VRA in 1965.¹³

The bottom line of the Census Bureau's surveys are that Americans are easily registering – when they want to – and they are turning out to vote when they are interested in the candidates who are running for office. In fact, in an election year in which we were dealing with an unprecedented shutdown of the country due to a pandemic, we had, according to the Census Bureau, "the highest voter turnout of the 21st century."

Proposed Amendments in H.R. 4

Not only are minority voters registering and turning out to vote in record numbers, but the other factors that showed the need for preclearance have also long disappeared. As the Supreme Court pointed out in the *Northwest Austin* case: "Voter turnout and registration rates now approach parity. Blatantly discriminatory evasions of federal decrees are rare. And minority candidates hold office at unprecedented levels."¹⁴ Yet the amendment being proposed in S. 4, "The John Lewis Voting Rights Act Advancement Act," would not only bring back the preclearance requirement of Section 5, but actually *expand* preclearance to reach every state in the country with a new and unprecedented "practice based" preclearance requirement even though there is far less voting discrimination than at any point in our history as a democratic republic.

The new coverage formula in S. 4 is unfair and will not satisfy constitutional concerns. First of all, a state government and all of its subdivisions will be placed under preclearance coverage for ten years if there are 15 "voting rights violations" by local jurisdictions during the "previous 25 calendar years." Thus, a state government can have preclearance imposed on it, even though it has no voice in who is elected to positions in local government and no supervisory authority over, and no ability to direct, what those local elected officials do in passing local ordinances and engaging in redistricting.

Similarly, local governments that have never engaged in any discriminatory actions of any kind, and that obviously have no control over what the state legislature or other local governments do, will still have preclearance imposed on them for ten years if there are ten voting rights violations committed by other actors, one of which was the state. Both of these coverage formulas violate basic and fundamental principles of due process and fairness, among other problems.

Second, "voting rights violations" include not just final court judgments that a jurisdiction has violated the VRA or the Fourteenth and Fifteenth Amendments, but also settlement agreements, consent decrees, and any preclearance objections made by the Attorney General.

¹³ Hans von Spakovsky, "Tenth Anniversary of Shelby County: Cause for Celebration," Heritage Foundation Legal Memorandum No. 345 (Nov. 17, 2023).

¹⁴ *Nw. Austin Mun. Util. Dist. No. One v. Holder*, 557 U.S. 193, 202 (2009) (citation omitted).

Such objections by the Attorney General under Section 5 do not require any finding of intentional discrimination and can be based on statistical disparities that are not discriminatory, a dubious and highly questionable legal standard that S. 4 would incorporate into Section 2.

Including settlement agreements and consent decrees will not only deter defendants from settling cases, but it will also lead to collusive litigation. Even settlements of meritless litigation that a state or local jurisdiction enters into to avoid the cost of litigation would count as a “voting rights violation” for purposes of triggering preclearance coverage. Moreover, there will be a strong incentive for plaintiffs who are allied politically with the elected leadership of local jurisdictions to file collusive litigation in which the defendants quickly agree to settle what may be a frivolous lawsuit in order for it to count as a voting rights violation so preclearance will be imposed on the entire state. This could enable partisan advocacy groups and others to bring states within preclearance coverage through a series of such lawsuits against their political partners.

However, S. 4 contains a new, unprecedented preclearance provision that would expand the reach of Section 5 far beyond what existed in 1965. The additional “practice based” preclearance being proposed would apply to every single political jurisdiction in the United States, whether they meet the new coverage formula or not, even if there has been absolutely no evidence of discriminatory conduct whatsoever by those jurisdictions. It would apply to changes covering election rules – “practices” – such as the “documentation or proof of identity” needed to register or vote, or the methods used by states to maintain the accuracy of their voter lists.

The “practices” that would have to be approved by the Justice Department or the U.S. District Court for the District of Columbia before they can take effect are so broad and cover such a wide spectrum of election administration procedures and rules that election changes made by state legislatures and local governments in virtually every state would be under federal control, creating an unprecedented violation of the constitutional right of states to administer their elections and to determine the eligibility of voters for federal elections.

There is no justification for requiring cities, counties, and states to get the approval of the Attorney General of the United State for changes, including referenda approved by voters, which have been implemented through the democratic process.

There is also no need for new legislation reimposing and actually expanding the onerous preclearance requirements of Section 5 of the VRA, and no evidence that the permanent provisions of the VRA such as Section 2 are not adequate to protect voters’ rights. The proposed amendments are also almost certainly unconstitutional because they do not satisfy what is required by the Supreme Court’s *Shelby County* decision to justify continuing, much less expanding, the preclearance requirement.

As the Court made clear in that decision, the 1965 standards were obsolete, and any requirement that states obtain federal pre-approval of any proposed election changes before they

can be implemented could be imposed only if Congress found “blatantly discriminatory evasions of federal decrees;” lack of minority office holding; voting tests and devices; “voting discrimination ‘on a pervasive scale;’” or “flagrant” or “rampant” voting discrimination. These conditions are nowhere to be found in any state in 2024.

Additionally, Section 3 of the VRA already allows a federal court to impose a preclearance requirement in a particular jurisdiction for as long as necessary where the court determines that there is intentional misconduct and preclearance is required to ensure compliance with the voting guarantees of the Fourteenth and Fifteenth Amendments.¹⁵ With the availability of the customized preclearance requirement of Section 3 that can be imposed on a recalcitrant jurisdiction based on the specific evidence of wrongdoing uncovered in a specific enforcement action, there is no need for a broad, general, and expanded preclearance requirement as proposed in S. 4.

If S. 4 is enacted, the lawyers inside the Voting Section of the Civil Rights Division would be given veto authority over state election laws and regulations. When it comes to exercising that powerful discretion and initiating unbiased enforcement actions, the attorneys in that section have a very checkered record. This was perhaps best captured in 1994 in *Johnson v. Miller*, where a federal court issued a scathing opinion in a preclearance case charging that “the considerable influence of ACLU advocacy on the voting rights decisions of the United States attorney general is an embarrassment” and that the “dynamics” between the DOJ and American Civil Liberties Union lawyers “were that of peers working together, not of an advocate submitting proposals to higher authorities.” The judge was “surprised” that DOJ “was so blind to this impropriety, especially in a role as sensitive as that of preserving the fundamental right to vote.”¹⁶ The judge also found the “professed amnesia” of the DOJ lawyers about their relationship with ACLU attorneys “less than credible.”

In another case involving preclearance, a federal court ruled against DOJ, holding that it “had arrogated the power to use Section 5 preclearance as a sword to implement forcibly its own redistricting policies.”¹⁷ In fact, using its power under the VRA, DOJ “impermissibly encouraged – nay, mandated – racial gerrymandering.”¹⁸ The public was forced to pay the state of Louisiana over \$1.1 million in attorneys’ fees and costs due to DOJ’s wrongdoing in that case.

As the Senate Judiciary Committee should be aware from a letter sent to the House Judiciary Committee in 2006 by the Justice Department, these were just two of 11 cases involving the Civil Rights Division from 1993 to 2000 in which courts admonished the Division for its misbehavior and awarded over \$4.1 million in attorneys’ fees and costs to defendants abusively targeted by the Division.¹⁹

¹⁶ *Johnson v. Miller*, 864 F.Supp. 1354 (S.D. Ga. 1994).

¹⁷ *Hays v. State of Louisiana*, 839 F. Supp. 1188 (W.D. La. 1993).

¹⁸ 936 F.Supp. 360 (W.D. La. 1996).

¹⁹ Letter of April 12, 2006, from William E. Moschella, Assistant Attorney General for Legislative Affairs, U.S. Department of Justice, to Hon. F. James Sensenbrenner, Chairman, Committee on the Judiciary, U.S. House of Representatives.

In 2013, the Inspector General of the Justice Department issued a critical report on the operations of the Voting Section of the Civil Rights Division that cited numerous examples of inappropriate and biased behavior by its staff.²⁰ No one who reads that report could possibly think that giving the partisans who work in the Voting Section the regal power to decide what the election rules are for each state could possibly be a good idea.

The VRA is race-neutral – it protects *all* voters from discrimination. But that is decidedly not the view of the Voting Section staff. The Inspector General found “relevant evidence” demonstrating the staff “disfavored” cases where victims of discrimination were white.²¹ This resulted in their ignoring discrimination against white voters even in the most egregious of circumstances.

For example, the Voting Section failed to take action against a Guam law that used a blood ancestry test – the same kind used in the South during the Jim Crow era to exclude blacks – to prevent white and Asian residents of Guam from being able to register and take part in a plebiscite. It took an expensive private lawsuit to end Guam’s bigoted treatment of its residents, which the Ninth Circuit U.S. Court of Appeals found violated the Fifteenth Amendment in *Davis v. Guam* in 2019.²²

In 2006, according to the Inspector General, staff members assigned to file a lawsuit under the VRA against black officials in Noxubee County, Mississippi, for discriminating against white voters were subjected to written and verbal abuse from peers. The team leader was called a “Klansman” in official email correspondence. A black intern who requested to join the team was repeatedly taunted as a “token” and when the intern’s mother paid a visit to the office, career employees complained that her son was acting as a racial “turncoat.”²³

A federal court in 2007 found that the defendants in Noxubee County had engaged in “blatant” racial discrimination in a case that the majority of career staff not only did not want to bring, but in which they attempted to intimidate and harass those involved in working on the case.²⁴

The Inspector General also found that career employees, identifying themselves as DOJ employees, published “highly offensive and potentially threatening statements” about colleagues on prominent liberal-leaning news websites, including posting comments about one person’s “Yellow Fever” – a demeaning reference to that person’s presumed sexual attraction to a person who “look[s] Asian.”²⁵

²⁰ “A Review of the Operations of the Voting Section of the Civil Right Division,” Office of the Inspector General, U.S. Department of Justice (March 2013) (hereinafter “OIG Report”).

²¹ OIG Report, p. 179.

²² *Davis v. Guam*, 932 F.3d 822 (9th Cir. 2019).

²³ OIG Report, p. 121-123.

²⁴ *U.S. v. Brown*, 494 F.Supp.2d 440 (S.D. Miss. 2007), affirmed 561 F.3d 420 (5th Cir. 2009).

²⁵ OIG Report, p. 127.

Another staff employee confessed to being the organizer of a three-person “cyber-gang” that published comments falsely asserting that a supervisor was a racist after hanging a noose in the supervisor’s office (p. 128-129). This employee, who adopted an online avatar of a black literary character who becomes a killer, made further online comments, including stating his desire to “choke” colleagues with whom he disagreed (p. 130).

The Inspector General found other conduct by staff in the Voting Section to be “disturbing,” including posting messages on liberal news sites disparaging administration officials and Section managers, and using extremely bigoted, racial language towards anyone they believed did not share their liberal views. When confronted with the Internet postings about conservative co-workers, one member of the “cyber bullying” group initially lied under oath to the Inspector General’s staff about her participation.²⁶

Lying to an Inspector General employee conducting an investigation is a federal crime, just as it is to lie to an FBI agent. Yet no adverse actions of any kind were taken against this Section staffer. In fact, a source inside the Voting Section told me she was treated as a “hero” by other employees.

Relevant to the finding by a federal court in the *Miller* case, the Inspector General also criticized Voting Section management for specifically reaching out only to progressive organizations, such as the ACLU, the Mexican American Legal Defense and Education Fund, the NAACP Legal Defense and Education Fund, and the Lawyers’ Committee for Civil Rights under Law, to fill job openings, while ignoring the resumes of other qualified professionals.²⁷ As a result, only applicants whose views were slanted dramatically to the left on the ideological spectrum, many of whom endorsed questionable views of the law, were given serious consideration.²⁸

One can already see this bias and abuse of authority in some of the more recent actions taken by the Civil Rights Division. DOJ threatened Arizona over the forensic post-election audit it conducted in a May 5, 2021, letter and issued “guidance” on July 28, 2021, purporting to outline “Federal Law Constraints on Post-Election Audits.”²⁹

This “guidance” wrongly exaggerates the reach of 52 U.S.C. §§ 20701-20706. The purpose of these federal statutes, which require the preservation of federal election records, is investigatory in nature. They exist to help the Attorney General in determining the advisability of commencing possible investigations of federal election offenses. But if there is no underlying potential voting rights violation, any exercise of this power is not authorized and is a brazen abuse of power.

Contrary to the assertions made by DOJ, conducting an audit of a past election does not violate the VRA or any other federal election law. In fact, the Justice Department has never – in the entire history of the existence of the Civil Rights Division – interfered with or investigated an

²⁶ OIG Report, p. 127-129.

²⁷ OIG Report, p. 198.

²⁸ OIG Report, p. 219-222.

²⁹ “Federal Law Constraints on Post-Election ‘Audits,’” U.S. Department of Justice (July 28, 2021).

election audit, because its past leadership has understood it has no legal authority to do so. There is also no basis for DOJ to assert, as it does in the guidance, a possible violation of Section 11b of the VRA, which prohibits the direct intimidation, threat or coercion of individuals “for the purpose of interfering” with the ability to vote given that Arizona voters *have already voted!* The Justice Department’s assertion that an audit could violate Section 11b is a highly implausible, if not outright absurd, interpretation of the law.

The same is true of the Justice Department’s July 28, 2021, “Guidance Concerning Federal Statutes Affecting Methods of Voting.”³⁰ In this “guidance,” DOJ says that it does not “consider a jurisdiction’s re-adoption of prior voting laws or procedures to be presumptively lawful,” and instead will review the changes “for compliance with” federal law. In other words, DOJ will use the emergency procedures adopted to deal with the COVID-19 emergency as the new baseline for reviewing a state’s election laws under the VRA.

Not only is such a standard not contemplated by the text and legislative history of Section 2 of the VRA, which defines the Department’s authority to assert violations of the law, it certainly is not in accord with the clear guidance provided by the U.S. Supreme Court on the application of Section 2 in the *Brnovich v. Democratic National Committee* decision. It is another example of the Division’s abuse of its authority. Instead, the Department was trying to intimidate states to prevent them from returning to their election rules that were in place prior to the health emergency caused by the COVID-19 pandemic.

The provisions of S. 4 that attempt to overturn the Supreme Court’s clear, common-sense guidance in the *Brnovich* decision on the application of Section 2 of the VRA are also ill-advised and interfere with states’ constitutional authority over the administration of elections. S. 4 attempts to eliminate rational and fundamental factors that are essential to evaluating the “totality of the circumstances” in any Section 2 lawsuit and whether a particular election practice is racially discriminatory.

It seems obvious that whether a similar practice – such as requiring voters to vote in their assigned precincts – has a “long pedigree or was in widespread use” or is “identical or similar” to the practices of other states is highly relevant to whether the practice is discriminatory. So is looking at the “availability of other forms of voting unimpacted by the challenged qualification.” And yet S. 4 would eliminate these important considerations as a defense to any claimed Section 2 violation.

S. 4 eliminates other highly relevant factors for evaluating the “totality of the circumstances” such as the “total number or share of members of a protected class on whom” the challenged practice will “not impose a material burden.” This is patently absurd. Under this

³⁰ “Guidance Concerning Federal Statutes Affecting Methods of Voting,” U.S. Department of Justice (July 28, 2021).

formulation of Section 2, if a state is able to show that 99.99% of Hispanic or black voters are unaffected by an election change, the state could still be found in violation of Section 2.

The proposed amendments would interfere with the ability of state legislators to protect their voters and the integrity of the election process by eliminating their ability to act to prevent election fraud or maintain public confidence in our elections. Those are two of the most fundamental duties of state and local officials when it comes to elections and the protection of democracy. Yet S. 4 would throw out all of these relevant factors as a viable defense to a Section 2 claim.

If enacted, this would be a dangerous and reckless policy that would risk the integrity of our elections and the confidence of voters in the fairness and security of elections. Maintaining public confidence is essential to turnout and keeping voters motivated to cast their ballots and participate in choosing their representatives at all levels of government. As former President Jimmy Carter (D) and former Secretary of State James Baker (R) said in their bipartisan 2005 report on our elections, “[b]uilding confidence in U.S. elections is central to our nation’s democracy.”³¹

S. 4 also specifically amends the VRA by inserting language stating that a “class of citizens protected” by Section 2 “may include a cohesive coalition of members of different racial or language minority groups.” Thus, if 25% of the voters in a particular congressional or state legislative district are Hispanic or African American and form a political coalition with 35% of the white voters in that district, all of whom consistently vote for the candidates of one political party, it would become a protected district under the VRA.

This unwise and unfair amendment would change the VRA from a statute intended to prevent racial discrimination in voting into a partisan political tool to protect political alliances and coalitions. As the Supreme Court said in *Bartlett v. Strickland* in 2009, this would raise “serious constitutional questions” about the validity of Section 2 of the VRA.³²

The VRA was passed by Congress under the authority of the Fifteenth Amendment, which bans denial or abridgment of the right vote on account of race. Changing Section 2 to protect political alliances as opposed to enforcing the straightforward language of the amendment to prevent racial discrimination would be far outside the enforcement authority granted by the amendment.

This change would also raise “serious constitutional concerns under the Equal Protection Clause” of the Fourteenth Amendment. Section 2 was not intended to “guarantee minority voters an electoral advantage,” and the protection of such combined districts would give minority voter

³¹ “Building Confidence in U.S. Elections,” Report of the Commission on Federal Election Reform (Sept. 2005), p. iv.

³² *Bartlett v. Strickland*, 556 U.S. 1, 18 (2009).

an electoral advantage not provided to other groups such as, for example, white voters who constitute a majority in a district.³³

There are numerous other problems with changes proposed in S. 4, many of which would raise substantial questions about the constitutionality of the VRA if they were adopted. This includes the creation of a novel legal standard for injunctive relief unknown in modern jurisprudence that reverses the principle that the burden of proof is on a plaintiff, not the defendant. It mandates that federal courts issue an injunction if a plaintiff simply raises “a serious question” about a voting change and the “hardship” imposed on the state by enjoining the change is less than the “hardship” that would be experienced by the plaintiff if an injunction is not issued.

The inability of a state to enforce its own voting laws and regulations does not “constitute irreparable harm to the public interest,” thus overriding the fundamental democratic principle that the public interest is best served by courts enforcing the laws under which citizens choose to govern themselves through the representational process.³⁴

This change alone is perhaps one of the most anti-democratic provisions ever proposed by members of Congress.

Conclusion

Existing federal voting laws, including the VRA and other statutes such as the National Voter Registration Act and the Help America Vote Act, are more than sufficient to protect voters and ensure that they can easily and securely practice their franchise without discrimination, fear, or intimidation. Americans today have an easier time registering and voting securely than at any time in our nation’s history, and election officials and voters are already protected from intimidation and coercion by comprehensive federal and state laws. Voter registration and turnout data, as well as the enforcement record of the U.S. Justice Department, show that there is no widespread, systematic discrimination by state or local election officials to prevent citizens from registering and voting.

The permanent, nationwide provisions of the VRA such as Section 2 and Section 3 as currently written that apply across the country – not just to formerly covered jurisdiction under Section 5 – are powerful tools that still exist and are more than adequate to protect voting rights in those increasingly rare instances where discrimination does occur.

There is simply no need to resuscitate the outdated and obsolete preclearance provisions of Section 5 of the VRA and certainly no need to implement a new, vastly expanded Section 5, which in addition to bringing back preclearance for covered jurisdictions, would add a “practice-based”

³³ Bartlett at 21.

³⁴ For more details about other unfair and unconstitutional sections of S. 4, see Hans von Spakovsky, “Destroying Election Integrity: The Unnecessary and Unconstitutional John R. Lewis Voting Rights Advancement Act (S. 4/H.R. 4),” Heritage Foundation Legal Memorandum No. 292 (Oct. 29, 2021).

preclearance requirement that would apply to every city, county, and state in the country. And the changes proposed to Section 2 would change it from a provision intended to prevent racial discrimination in voting to a tool for political manipulation of redistricting and the voting process intended to guarantee the success of one specific political party.

It is not 1965 and there is no longer any justification for giving the federal government the ability to veto the election laws and regulations that citizens and their elected representatives choose to implement in their respective states. There is also no justification for eliminating the ability of states to defend themselves from meritless lawsuits filed under the Voting Rights Act for nondiscriminatory, widespread, traditional election practices that have been developed to ensure both access for voters and the safe, fair, effective, and secure administration of our elections.



The Native American Rights Fund (“NARF”) submits this testimony in response to the U.S. Senate Committee on the Judiciary’s March 12, 2024 hearing entitled “The Right Side of History: Protecting Voting Rights In America.”

Since 1970, NARF has provided legal assistance to Indian tribes, and Native organizations, and individuals nationwide who might otherwise have gone without adequate representation. NARF has successfully asserted and defended the most important rights of Native Americans¹ and tribes in hundreds of major cases and has achieved significant results in such critical areas as tribal sovereignty, treaty rights, natural resource protection, Indian education, and voting rights. NARF is a non-profit 501(c)(3) organization that focuses on applying existing laws and treaties to ensure that the federal and state governments live up to their legal obligations to tribes and Native Americans.

Since 2015, NARF has led the Native American Voting Rights Coalition (“NAVRC”), composed of national, regional, and local organizations, tribes, and academics dedicated to advancing Native American voting rights. NAVRC was founded to facilitate collaboration between its members on coordinated approaches to the barriers that Native Americans face in registering to vote, casting their ballot, and having an equal voice in elections.

I. Contemporary Obstacles to Voting Faced by Native Americans

Native Americans face many obstacles to voting. Obstacles can include isolating conditions that reduce opportunities and participation, structural or institutional barriers that limit voter participation the passage of laws or policies, and election administration issues.

¹ The term Native American, American Indian, and Indian are used interchangeably throughout this statement. These terms include Alaska Natives and Native Hawaiians.

Today, many Native American reservations are located in extremely rural areas, distant from the nearest off-reservation border town. This was by design, as official government policies forcibly removed Native Americans and segregated them onto the most remote and undesirable land. As a result of these policies, travel to county seats for voting services can be hundreds of miles away. Services such as DMVs and post offices can also require hours of travel. As detailed extensively below, the impacts of discrimination are not only in the past. Due to ongoing discrimination and governmental neglect, many Native Americans live in overcrowded homes that do not have addresses, do not receive mail, and are located on dirt roads that become impassable with inclement weather. Lack of broadband internet, cell phone coverage, or the economic means for transportation to in-person assistance means there are Native Americans that cannot access basic government services.

Led by NARF, in April 2018, NAVRC completed a series of nine field hearings in seven states on the state of voting rights in Indian Country. Approximately 125 witnesses from dozens of tribes around the country, generating thousands of pages of transcripts with their testimony, testified about the state of voting in Indian Country in non-tribal elections and documented the work that remains to be done. Witnesses included tribal leaders, community organizers, academics, politicians, and Native voters. They shared their experiences within voter registration and voting in federal, state, and local (non-tribal) elections.

The field hearings made clear that across this country Native Americans face unjust barriers that prevent them from having equal access to the ballot box. Common factors discouraging political participation, include by way of illustration and not limitation: (1) geographical isolation; (2) physical and natural barriers; (3) poorly maintained or non-existent roads; (4) distance and limited hours of government offices; (5) technological barriers and the digital divide; (6) low levels of educational attainment; (7) depressed socio-economic conditions; (8) homelessness and housing insecurity; (9) non-traditional mailing addresses such as post office boxes or lack of residential address; (10) lack of funding for elections; and (11) overt and intentional racial discrimination against Native Americans.

In addition to this daunting list of factors, language access also remains an obstacle for some Native American voters. Under the 2011 determinations of jurisdictions that required language assistance, Native American languages were the second most common language group after Spanish. Section 203 of the Voting Rights Act (“VRA”) helps Limited-English Proficient (“LEP”) American Indian and Alaska Native voters overcome barriers to political participation by requiring 35 political subdivisions in nine states to

provide bilingual written materials and oral language assistance.² Despite these broad protections, jurisdictions have often failed to provide the required translations, forcing Native voters to file costly lawsuits to protect their rights.

Even if Native American voters can overcome the aforementioned barriers and register to vote, the field hearings showed that they face an additional set of barriers to cast their ballot. Such barriers include, among others: (1) unequal funding for voting activities in Native communities; (2) lack of pre-election information and outreach; (3) cultural and political isolation; (4) unequal access to in-person and early voting; (5) barriers caused by vote-by-mail; (6) state laws that create arbitrary population thresholds to establish polling places; (7) the use of the Americans with Disabilities Act to deny polling places on reservation lands; and (8) the lack of Native American poll workers.

These barriers are extensively documented in a report released in June of 2020, *Obstacles at Every Turn: Barriers to Political Participation Faced by Native American Voters*³ as well as addenda reflecting on the 2020 election cycle and the outcome of the 2021 legislative session. These reports have been previously submitted to this Committee's subcommittee on the Constitution, following the October 27, 2021 hearing entitled "Voting Matters in Native Communities."

Too often, these vulnerabilities are exploited by state laws and county rules that further undermine the ability of Native Americans to cast their ballot. As a result, voting in Native communities is difficult and can even be impossible. The exploitation of these vulnerabilities is at times intentional, and even seemingly race-neutral laws can be used to disenfranchise Native Americans when they interact with existing barriers. An example from North Dakota illustrates this point in the context of Voter ID. While minority witness Mr. Hans von Spakovsky alleged "[o]n voter ID. . . the data is very clear that such a requirement does not prevent eligible individuals from voting," this selectively expansive view ignores how discrimination occurs in practice.

For example, in 2011, the North Dakota legislature considered enacting a new voter ID law that would have limited the valid forms of voter ID and eliminated fail safe mechanisms for those without IDs. Throughout consideration of the bill, legislators on both sides of the aisle raised concerns about the impact on voters. In addition, the legislature was informed during these deliberations that there were Native Americans

² See 52 U.S.C. § 10503. Other permanent provisions likewise can be used to ensure that LEP voters receive assistance. Section 2, the VRA's permanent non-discrimination provision, applies nationwide and has been used to secure language assistance for voters who are denied equal voting opportunities by English-only election procedures. See 52 U.S.C. §§ 10301, 10508.

³ James Thomas Tucker, Jacqueline De León, & Daniel McCool, *Obstacles at Every Turn: Barriers to Political Participation Faced by Native American Voters* (NATIVE AM. RIGHTS FUND, 2020), https://vote.narf.org/wp-content/uploads/2020/06/obstacles_at_every_turn.pdf.

who lacked residential addresses and, even if they did have an address, that address may not be known to them because their houses were unmarked. The legislature ultimately decided, 38-8, not to enact the proposed changes to the voter ID laws.⁴

The next year, however, Democrat Heidi Heitkamp unexpectedly won the election for U.S. Senate by fewer than 3,000 votes. The Native American community was widely credited with securing her win. In the legislative session following the election, just two years after the bipartisan rejection of voter ID reform, the legislature greatly restricted the acceptable forms of voter identification, continued to require a residential address on IDs, and eliminated all fail safe mechanisms, despite knowing that there were Native Americans that did not have residential addresses and therefore could not comply with the law despite being qualified to vote.⁵ In 2015 North Dakota amended its voter ID laws to even further restrict the forms of acceptable ID.⁶

NARF filed suit on behalf of seven individual members of the Turtle Mountain Band of Chippewa, several of whom did not have residential addresses on their IDs.⁷ Plaintiffs prevailed and the court found “it is clear that a safety net is needed for those voters who simply cannot obtain a qualifying ID with reasonable effort.”⁸ The court further found that North Dakota officials admitted to turning away Native American voters and that “many” Native American voters were turned away from poll workers specifically because the IDs they did have did not disclose their current residential address.⁹

Undeterred, the year after the preliminary injunction was issued, the Legislature passed another voter ID law that still required that the voter possess one of the few forms of qualifying ID. It did not make it easier for Native Americans to obtain IDs or get rid of the residential address requirement. Plaintiffs again brought an action and the court again enjoined the State from enforcing the newest version of the voter ID law due to the unfair burdens placed upon Native American voters, especially those that did not have residential addresses they could present on their IDs.¹⁰

Following a series of appeals and four years of litigation, in February 2020, seven years after the North Dakota voter ID bill was passed, the case was finally settled. The State

⁴ Hearing Minutes on H.B. 1447 Before H. Political Subdivision Comm. H.B. 1447, 62nd Leg. Assemb. Reg. Sess. at 2 (2011).

⁵ See N.D. Cent. Code § 16.1-05-07.

⁶ First Amend. Compl., *Brakebill v. Jaeger*, No. 1:16-CV008, at ¶¶ 87-89, ECF No. 77, <https://www.narf.org/nill/documents/20171213nd-voting-complaint.PDF>.

⁷ *Brakebill v. Jaeger* (“Jaeger I”), No. 1:16-CV008, 2016 WL 7118548, at *1 (D.N.D. Aug. 1, 2016).

⁸ *Id.* at *10 (order granting preliminary injunction).

⁹ *Id.* at *16.

¹⁰ *Brakebill v. Jaeger* (“Jaeger II”), No. 1:16-cv-008, 2016 WL 7118548 (D.N.D. Aug. 1, 2016).

agreed to be bound by a consent decree that provides a method for voters without a residential address to vote.¹¹

Laws and election procedures that exploit the inequities faced by Native Americans on account of their race are a blight onto this Nation's promise of equality and fairness. As this example from North Dakota shows, once an inequity that disproportionately affects a minority is identified, a legislature can easily craft a law that implicates that inequity without mentioning race. Voter ID laws can be manipulated to exclude vulnerable Native American voters. The John R. Lewis Voting Rights Advancement Act, with its federal check on changes to Voter ID laws, would help prevent this abuse.

II. Native Americans Continue to Face Overt Racial Hostilities in Their Everyday Lives Necessitating a Fully Functioning Voting Rights Act

Minority Witness Ms. Maureen Riordan declared “we no longer have rampant discrimination in this country.” This is news to those in Indian Country, which is still rife with discrimination. For example, in South Dakota, in 2022, a hotel establishment forbade Native Americans from booking rooms and declared they “will no long[er] allow any Native American on property,” prompting the Department of Justice to file a lawsuit alleging that defendants discriminated against Native Americans in violation of Title II of the Civil Rights Act of 1964. Upon conclusion of that case Attorney General Merrick Garland remarked that the case was “reminiscent of a long history of prejudice and exclusion Native Americans have faced.”¹² The weekend before Election Day in 2020, a man visited several bars in Glasgow, Montana, roughly ten miles from the western border of the Fort Peck Indian Reservation, in full KKK attire. None of the other bar patrons were fazed, and many even supported him. Indeed, the “costume” was the winner at a local Halloween costume contest.¹³ Though mostly associated with the Deep South, the KKK has been prominently anti-Native since at least the 1920s in Glasgow, Plentywood, and Bainville, Montana—all locations that border the Fort Peck Reservation. And in 2020, Representative Tiffany Zulkosky, a Yup'ik woman who currently is the only Alaska Native woman serving in the Alaska legislature, reflected on the racial discrimination she has faced while serving, and the “derisive comments” from fellow representatives

¹¹ See Maggie Astor, *North Dakota Tribes Score Key Voting Rights Victory*, THE NEW YORK TIMES (Feb. 13, 2020), <https://www.nytimes.com/2020/02/13/us/politics/north-dakota-voter-id.html?fbclid=IwAR2jY8>.

¹² [Office of Public Affairs | Justice Department Secures Agreement with South Dakota Hotel and Sports Lounge to Resolve Allegations of Discrimination Against Native Americans | United States Department of Justice.](#)

¹³ [https://www.greatfalltribune.com/story/news/2020/11/02/montana-r-man-kkk-costume-reportedly-wins-glasgow-bar-contest/6130962002/.](https://www.greatfalltribune.com/story/news/2020/11/02/montana-r-man-kkk-costume-reportedly-wins-glasgow-bar-contest/6130962002/)

stating, “[w]e’ve made so much progress in 75 years,” referring to the passage of the 1945 Anti-Discrimination Act which prohibited racial discrimination in the state, “[b]ut sometimes in that [Capitol] building, you would never know the difference.”¹⁴

Additionally, in 2013, the suspension of Section 5 following the invalidation of the coverage formula in *Shelby County v. Holder*,¹⁵ negatively impacted Indian Country. Arizona and Alaska, both with substantial Native American populations, were previously covered under Section 5 resulting in protection for those groups. Two counties, Todd and Shannon (renamed Oglala Lakota) counties in South Dakota also fell under coverage because of their continual voting rights violations.

Section 5 was effective. For example, in 2008, Alaska attempted to eliminate polling locations in the Alaska Native communities of Tatitlek, Pedro Bay, and Levelock and force Native voters to travel to predominately white communities to cast their ballots. These non-Native communities are not only a significant distance away but can only be accessed by boat or plane during fair weather. Fair weather certainly is not guaranteed in the election month of November. Because of Section 5, Alaska was forced to preclear this proposed election change. The United States responded to Alaska with several detailed “More Information Requests”¹⁶ about the impact the move would have on Alaska Native voters. In response, Alaska withdrew its discriminatory proposal.¹⁷

Likewise, in 2011, Arizona attempted to preclear a ballot collection restriction. Restrictions on ballot collection, also referred to as “ballot harvesting,” can disproportionately impact Native communities. Because of the lack of home mail delivery on many reservations, Native Americans must travel to access their ballot. Doing so at a distant post office is burdensome and can be challenging, since operating hours at these rural post offices may be limited. Lack of transportation and high rates of poverty only compound these difficulties. Consequently, many Native Americans will pool resources to collect and drop off mail for each other, including ballots. Get-out-the-vote organizations likewise distribute and drop off ballots to decrease the cost of voting in rural and disconnected Native communities.¹⁸ When the Department of Justice

¹⁴ Peter Segall, *Alaska Native leaders say racial discrimination still affects communities*, JUNEAU EMPIRE (Feb. 17, 2020), <https://www.juneauempire.com/news/alaska-native-leaders-say-racial-discrimination-still-affects-communities/>.

¹⁵ *Shelby Cnty. v. Holder*, 570 U.S. 529 (2013).

¹⁶ “More Information Requests” are formal letters sent by Senior Officials in the Department of Justice asking the submitting jurisdiction for information about the proposed change in voting procedure or practice. Department of Justice, 28 C.F.R. § 51.37, Procedures for the Administration of Section 5 of the Voting Rights Act of 1965, as amended.

¹⁷ Brief for the Alaska Federation of Natives, Alaska Native Voters and Tribes as Amicus Curiae, *Shelby County v. Holder*, 570 U.S. 529 (2013), https://narf.org/bloglinks/shelby_county_brief.pdf.

¹⁸ Brief for the National Congress of American Indians as Amicus Curiae, *Brnovich v. Democratic Nat’l Comm. v. Reagan*, 141 S. Ct. 2232 (2021), available at: [Microsoft Word - 40361 Jacket cv](#)

responded with a More Information Request on the impact that the ban would have on minority voters, Arizona withdrew the preclearance request.¹⁹ Withdrawing a preclearance request was rare for Arizona – out of 773 proposals in 40 years, the ballot collection restriction was only one of six withdrawn.

Then, in anticipation of the imminent ruling in *Shelby*, the Arizona Governor signed a bill without preclearance that included a provision that outlawed certain types of ballot collection. The gamble paid off and the law went into effect on June 19, 2013. *Shelby* was decided six days later on June 25, 2013, allowing a provision that had previously been deterred by preclearance to go into effect unencumbered.²⁰ In 2016, the legislature passed H.B. 2023 which included an even more restrictive ballot collection ban and imposed criminal penalties.

H.B. 2023's ballot collection ban and another Arizona policy that required ballots cast out of precinct to be thrown away in their entirety, were challenged in federal court under Section 2 of the Voting Rights Act due to their racially discriminatory impacts on minorities in Arizona. In *Shelby*, Chief Justice Roberts had assured that even though Section 5 was no longer in effect, the Court's "decision in no way affects the permanent, nationwide ban on racial discrimination in voting found in §2."²¹ In *Brnovich v. Democratic Nat'l Committee*, however, the Chief Justice's assurances rang hollow and the Court upheld H.B. 2023 and the out-of-precinct policy despite their discriminatory impacts.²²

Brnovich also set a new standard to evaluate vote denial claims under Section 2 of the Voting Rights Act. In doing so, the Court made it more difficult for plaintiffs to challenge racially discriminatory laws. The Court imposed new cumbersome standards for evaluating Section 2 claims. Most distressing for Native communities was the Court's dismissal of voter discrimination if it is small enough. Justice Alito wrote "the size of any disparities in a rule's impact on members of different racial or ethnic groups is also an important factor to consider."²³ In conducting the Court's analysis to Arizona's out of precinct policy, Justice Alito compared the effect on each minority group based on the total statewide population of each minority group. In so doing, Justice Alito erased the impact on specific communities. This leaves reservation-bound Native Americans especially vulnerable to disenfranchisement. While there may be a large Native American

03.docx (supremecourt.gov); Brief for the Navajo Nation as Amicus Curiae, *Brnovich v. Democratic Nat'l Comm. v. Reagan*, 141 S. Ct. 2232 (2021), available at: Microsoft Word - 40513 Ferguson-Bohnee cv 02.docx (supremecourt.gov).

¹⁹ Ariz. Att'y Gen. Thomas C. Horne, *Effect of Shelby County on Withdrawn Preclearance Submissions*, (Aug. 29, 2013), <https://www.azag.gov/opinions/i13-008-r13-013>; *Democratic Nat'l Comm. v. Reagan*, 329 F. Supp. 3d 824, 880 (D. Ariz. 2018).

²⁰ *Reagan*, 329 F. Supp. 3d at 881; H.B. 2305, 51st Leg., 1st Reg. Sess. (engrossed), at §§ 3 and 5 (Ariz. 2013), <https://legiscan.com/AZ/text/HB2305/id/864002>.

²¹ *Shelby*, 570 U.S. at 557.

²² *Brnovich v. Democratic Nat'l Committee*, 141 S. Ct. 2321 (2021).

²³ *Id.* at 2339.

population in places like Arizona, they are not all similarly situated. There is an especially stark difference between access for the substantial number of Native Americans living in cities compared to Native Americans living in rural reservation communities. The acceptance of wholesale disparate impact on entire communities if they are small enough relative to the overall state population of Native Americans – this acceptance of disenfranchisement – contradicts the core premise of the Voting Rights Act that *every* American is entitled to an equal opportunity to vote.

And indeed, the proposition that the “size” of these impacts can be small enough is belied by the incredibly close statewide races in swing states like Arizona. In the 2022 statewide election for Arizona Attorney General, the race came down to a mere 280 votes.²⁴ This is a mindbogglingly close race for this country’s 14th most populous state with approximately 7.15 million residents, approximately 4 million registered voters, and approximately 2.5 million votes cast in the 2022 election.²⁵ Congress must act to restore Sections 2 and 5 of the VRA through the John R. Lewis Voting Rights Advancement Act, so that Native Americans may fairly cast their ballots, free from racial discrimination and efforts to thwart their much deserved and much needed political power.

III. Congress Must Act to Fortify the VRA

One of the most important protections of the John R. Lewis Voting Rights Advancement Act is the recognition that private plaintiffs have a right to sue to protect their right to vote under Section 2 of the VRA. Section 2 of the VRA prohibits any “standard, practice, or procedure” that “results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color.”²⁶ A violation of Section 2 is established if it is shown that “the political processes leading to nomination or election” in the jurisdiction “are not equally open to participation by [a minority] in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice.”²⁷

For decades, the federal judiciary’s enforcement of Section 2 has been the only thing preventing state and county officials from unlawfully diluting minority voting strength. Since Congress’s amendments to Section 2 in 1982, private citizen voters have successfully remedied hundreds of unlawful redistricting plans across all levels of

²⁴ The Associated Press, Democrat Kris Mayes wins Arizona attorney general race after recount, NPR (December 29, 2022), <https://www.npr.org/2022/12/29/1146066922/democrat-wins-arizona-attorney-general-race-recount.com>.

²⁵ [Voter Registration Statistics | Arizona Secretary of State \(azsos.gov\)](https://www.azsos.gov/voter-registration-statistics).

²⁶ 52 U.S.C. § 10301(a).

²⁷ *Id.* at § 10301(b).

government, including districts for the U.S. House of Representatives, state legislatures, and even county and school board representatives.

However, Section 2's once settled law has been thrown into disarray. In November, 2023, the 8th Circuit Court of Appeals, in a 2-1 panel decision, upheld an Arkansas district court decision that overturned decades of precedence by deciding that Section 2 no longer provides a cause of action for private citizens.²⁸ This decision attempted to close the courthouse doors for voters in the 8th Circuit to challenge government action restricting their right to vote. According to the 8th Circuit, the VRA only endows the United States Attorney General with authority to seek redress for a Section 2 violation committed against voters. The opinion urges voters to sit idly by while their rights are being violated and hope the Attorney General may someday decide to file a case on their behalf. The minority witness Ms. Riordan suggested that the DOJ's paltry Section 2 enforcement of "not even one a year" indicated that meritorious cases did not exist. In a forceful dissent, however, the 8th Circuit Chief Judge noted that of the 182 successful Section 2 cases filed between 1982 and 2021, 167 of them were filed by private plaintiffs and the Attorney General only filed 15.²⁹ This record of success shows there are plenty of meritorious cases that the Department of Justice has failed to bring.

Just three days before the 8th Circuit issued its unprecedented decision, the District Court for North Dakota issued a trial decision in favor of the Turtle Mountain Band of Chippewa Indians, the Spirit Lake Nation and individual tribal members, finding that North Dakota's legislative redistricting plan dilutes the voting strength of Native American voters in violation of Section 2.³⁰ Once the 8th Circuit issued its decision, however, North Dakota decided to appeal the trial decision. Rather than fix the redistricting plan that a federal judge determined violates the VRA, North Dakota sought appeal to the 8th Circuit to keep its unlawful map in place by arguing that Native Americans have no legal recourse when the state violates their right to vote. The case is currently pending appeal.

The disparity between the number of Section 2 cases filed by private citizens versus those filed by the Attorney General shows no exception for Indian Country. In fact, only one known Indian Country Section 2 redistricting case has been filed by the Department of Justice in the past 20 years, which involved a case against a school district.³¹

²⁸ See *Ark. State Conf. NAACP v. Ark. Bd. of Apportionment*, 586 F. Supp. 3d 893, 911 (E.D. Ark. 2022), *aff'd*, 86 F.4th 1204 (8th Cir. 2023).

²⁹ *Ark. State Conf. NAACP v. Ark. Bd. of Apportionment*, 86 F.4th 1204, 1219 (8th Cir. 2023).

³⁰ *Turtle Mountain Band of Chippewa Indians v. Jaeger*, No. 3:22-cv-00022-PDW-ARS (D.N.D. Feb. 7, 2022).

³¹ *United States v. Chamberlain School District*, No. 4:20-cv-4084, 2020 WL 6866809 (D.S.D. May 27, 2020).

Meanwhile, Native Americans, and Native American tribes on their members' behalf, have filed numerous successful Section 2 cases, reversing unlawful redistricting plans and providing Native American voters with an opportunity to equally participate in the political process, as Section 2 intends. Just since the 2020 redistricting cycle, NARF alone has represented tribes and tribal members in four Section 2 redistricting cases,³² and at least five total such cases have been filed in federal court.³³ Notably, all five of these cases were either successfully settled or won by the Native American plaintiffs at trial. All five cases also involved Native American tribes filing suit alongside their tribal members, as tribes are in a unique position to represent their members and defend their right to vote.

Two examples highlight the need for tribes and tribal members to be able to bring Section 2 cases, and the inadequacy of the federal government to do so. The first example is Benson County, North Dakota. In 2000, the Department of Justice sued Benson County, for violating Section 2 based on an unlawful at-large election plan for the county commission that diluted the voting strength of the Spirit Lake Nation tribal members.³⁴ The Department of Justice and Benson County entered a consent decree prohibiting Benson County from further operation of at-large elections. However, in 2004, Benson County decided to revert back to at-large elections, in clear defiance of the consent decree and contrary to Ms. Riordan's assertion that "we no longer have evasion of court decrees." In any event, this action went unnoticed by the Department of Justice, and the consent decree continued to be violated until the Spirit Lake Nation and individual Spirit Lake members sued Benson County in 2022.³⁵

The second example highlighting the need for tribes and tribal members to have the ability to bring Section 2 cases is Thurston County, Nebraska, which is home to two tribes – the Winnebago Tribe of Nebraska and the Omaha Tribe of Nebraska. In 1979, the Department of Justice successfully sued Thurston County because its at-large county supervisor election plan violated Section 2 by diluting Native American voting strength. Despite this case, Thurston County was successfully sued again under Section 2 in 1993 by Native American voters in the county.³⁶ Then, the county was successfully sued under

³² *Turtle Mountain Band of Chippewa Indians v. Jaeger*, No. 3:22-cv-00022-PDW-ARS (D.N.D. Feb. 7, 2022); *Spirit Lake Tribe v. Benson County, N.D.*, No. 2:10-CV-095, 2010 WL 4226614 (D.N.D. Oct. 21, 2010); *Winnebago Tribe of Nebraska and Omaha Tribe of Nebraska v. Thurston County*, No. 8:23-cv-00020-RFR-JMD (D. Neb. January 19, 2023); *Lower Brule Sioux Tribe v. Lyman County, South Dakota*, No. 3:22-CV-03008-RAL (D.S.D. May 18, 2022).

³³ The fifth case being *Navajo Nation v. San Juan County, New Mexico* (D.N.M. February 10, 2022).

³⁴ *United States v. Benson County*, No. A2-00-30 (D.N.D. Mar. 10, 2000).

³⁵ *Spirit Lake Tribe v. Benson Cnty., N.D.*, No. 2:10-CV-095, 2010 WL 4226614 (D.N.D. Oct. 21, 2010).

³⁶ *Stabler v. Cnty. of Thurston*, No. 8:CV93-0394 (D. Neb. 1995), *aff'd*, 129 F.3d 1015 (8th Cir. 1997).

Section 2 for a third time, in 2023, by the Winnebago Tribe, the Omaha Tribe and members of both tribes.³⁷

It is not just the Section 2 litigation in Indian Country that has resulted in fairer districts, but also the threat of litigation. The need to comply with Section 2 guides elected officials across the country during the redistricting process and prevents unlawful vote dilution from occurring in the first place. For example, during North Dakota's legislative redistricting process in 2021, a state house subdistrict was created around the Fort Berthold Reservation of the Mandan, Hidatsa and Arikara Nation (MHA Nation). The record from the redistricting hearings makes clear that this subdistrict, for which the MHA Nation advocated, was created only to comply with Section 2 and avoid a lawsuit from MHA Nation. Although a lawsuit was later filed by partisan local officials to challenge the creation of that house subdistrict – a lawsuit in which the MHA Nation intervened to defend the subdistrict – the federal court dismissed that case due in large part to the legislature's compliance with Section 2 when creating the subdistrict.³⁸ The establishment of that subdistrict resulted in the election of an MHA Nation tribal member to represent the Reservation's district in the state legislature. Without the threat of Section 2 litigation, it is certain from the legislative history that the house subdistrict around the Fort Berthold Reservation would never have been drawn and the Native community would have gone without representation in the legislature.³⁹

Although limited resources can restrain the ability of tribes and Native American voters to seek redress for every Section 2 violation, relying solely on the Department of Justice is woefully inadequate. The examples from these two recidivist counties – Benson County, North Dakota and Thurston County, Nebraska – show that even initial Department of Justice action is not enough. Voters must be allowed to do the job that the federal government cannot. Preventing tribes and tribal members from bringing Section 2 cases will turn Section 2 into a paper tiger. It will exist in the law mostly as theory and hypothetical. Without the threat of Section 2 enforcement, redistricting violations will run rampant in Indian Country. Gains made over the past decades will be lost and Native

³⁷ Memorandum and Order, *Winnebago Tribe of Nebraska and Omaha Tribe of Nebraska v. Thurston County*, No. 8:23-cv-00020-RFR-JMD, 2024 WL 302390 (D. Neb. Jan. 26, 2023).

³⁸ Order on Motions for Summary Judgment, *Walen v. Burgum*, No. 1:22-cv-00031-PDW-RRE-DLH, 2023 WL 7216070, at *10 (D.N.D. Nov. 2, 2023) (“The undisputed record shows the Legislative Assembly did perform a contemplative and thorough pre-enactment analysis as to whether the subdistricts were required by the VRA and whether Native American voters would have a viable Section 2 claim without the subdistricts.”).

³⁹ See *id.* at 4, (“To comply with the VRA and avoid a Section 2 voter dilution claim from Native American voters, Senator Holmberg moved that the Redistricting Committee draw subdistricts around the Turtle Mountain and Fort Berthold Reservations”).

Americans will be further marginalized and ignored by their federal, state and local representatives.

IV. Conclusion

Racial discrimination persists across Indian Country and structural failures in Indian Country make it unreasonably difficult for Natives to vote. Consequently, Native Americans remain vulnerable to unjust disenfranchisement. Recently, courts have undermined key provisions of the VRA, further imperiling Native American's access to the ballot box and their ability to seek redress. Congress must act swiftly to fully restore the VRA through the John R. Lewis Voting Rights Advancement Act.

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The Impact of the
Shelby County
Decision on the
Political Participation
and Representation
of Black People and
Other People of Color
in the Deep South

A Decade-Long Erosion

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Executive Summary

The United States Supreme Court’s decision in the landmark voting rights case *Shelby County v. Holder* changed the landscape of voting rights in the Deep South.

The opinion struck down a key provision of the Voting Rights Act of 1965—Section 4(b)’s coverage formula—eliminating a critical accountability tool that had protected the voting rights of Black, Indigenous and other People of Color (BIPOC) in states with a history of discriminatory voting practices for almost half a century. In *Shelby County’s* wake, states across the Deep South passed voter suppression bills with reckless abandonment of democratic principles guaranteed by the U.S. Constitution, leading to a pervasive and damning path of voting barriers for BIPOC voters. *A Decade-Long Erosion: The Impact of the Shelby County Decision on the Political Participation and Representation of Black People and Other People of Color in the Deep South*, a report by the Southern Poverty Law Center, examines the voting rights landscape of the Deep South 10 years after the *Shelby County* decision. In this report, we outline how Southern states—including Alabama, Georgia, Florida, Louisiana and Mississippi—have created myriad hurdles in an attempt to suppress the BIPOC vote. This report focuses on the South because of the region’s intractable and pervasive history of racial discrimination in voting—a history that, since emancipation and the granting of the vote to formerly enslaved people, has been marred by numerous voter suppression tactics aimed to limit Black political participation and representation. Indeed, for several generations after passage of the 15th Amendment, Southern legislatures advanced new barriers to the vote with little to no oversight—maintaining their focus on Black voter suppression while simultaneously expanding the impact of their problematic tactics to also disenfranchise other communities of color. It was not until the Voting Rights Act of 1965 that voters of color finally had protection from this continued onslaught, making *Shelby County’s* elimination of this critical coverage all the more devastating. As a result of

this harmful decision, state legislatures across the South have operated unchecked on several fronts over the last decade to attack our democratic process and stymie BIPOC political participation.

But there is hope for a path forward. To protect and fortify BIPOC voting rights and representation, particularly in the Deep South, for the next decade and beyond, this report advances the following policy proposals:

1. Congress must pass legislation to restore and strengthen the Voting Rights Act that includes a coverage formula responsive to the current voting rights landscape. In the interim, states should pass state voting rights acts to protect BIPOC voting participation and representation now.
2. The federal government should increase funding for Department of Justice investigations of discriminatory voting practices and enforcement of voting rights laws.
3. States should restore the right to vote for people with criminal convictions without restrictions.
4. To respond to the growing demands placed on election administrators and increasing population growth in the South, the federal government should significantly increase election administration funding for state and local jurisdictions to allow them to both modernize their election infrastructure and carry out effective elections. This funding should be transparent, sustainable and predictable. Spending guidance must accompany the funding to ensure equitable distribution based on population and need.
5. States should move toward eliminating partisanship in the redistricting process and meaningfully include community input in the process.
6. Federal agencies should move swiftly and effectively to meet the goals of the Executive Order on Promoting Access to Voting, including integrating voter registration opportunities for their constituents wherever possible. ●

Introduction

“The Supreme Court has stuck a dagger into the heart of the Voting Rights Act. Although the court did not deny that voter discrimination still exists, it gutted the most powerful tool this nation has ever had to stop discriminatory voting practices from becoming law. Those justices were never beaten or jailed for trying to register to vote. They have no friends who gave their lives for the right to vote. I want to say to them, ‘Come and walk in my shoes.’”

John Lewis
Civil Rights Activist and U.S. Congressman

June 25, 2023, marks the 10th anniversary of the United States Supreme Court’s decision in *Shelby County v. Holder*, one of the most consequential voting rights cases of our time.

In this landmark 5-4 decision, the court struck down the coverage formula in Section 4(b) of the Voting Rights Act of 1965 (VRA), eliminating a preclearance process that had protected the voting rights of Black, Indigenous and other People of Color (BIPOC) for generations—especially in the Deep South. For almost half a century, the preclearance provisions of the VRA required certain covered jurisdictions with a history of racially discriminatory voting practices to secure preapproval from the U.S. Department of Justice (DOJ) or a three-judge federal panel in Washington, D.C., before changing or modifying their election practices. With the *Shelby County* decision, this critical accountability tool—also known as preclearance—came to an abrupt end.

The importance of the VRA’s preclearance process—contained in Section 5 of the VRA—cannot be overstated. Prior to the law’s passage, states and localities across the nation—with those in the Deep South among the worst actors—targeted and dismantled the Black vote through insidious voter suppression tools and tactics, such as poll taxes, grandfather clauses and literacy tests. Previous federal attempts to reel in this behavior were ineffective—for example, one historian noted that the Civil Rights Act of 1957, the first civil rights bill passed by Congress in over 80 years, “meant nothing in terms of changing how Black people lived their lives in the United States of America.”¹ While the law recognized the responsibility of the federal government to intervene to prevent discrimination, it failed to provide the robust legal enforcement tools needed to combat it. By passing the VRA and intentionally including within it a preclearance requirement, Congress sent a clear message: Legally granting the vote to Black people while simultaneously enacting endless barriers so that they could not exercise this fundamental right was antithetical to American democracy. Almost overnight, VRA preclearance transformed access to the vote. By December 1965, a quarter million new Black voters had registered to vote, and by the end of the following year, only four out of 13 Southern states had less than 50% of their Black population registered to vote.² Between 1965 and 2013, cov-

ered jurisdictions submitted over half a million proposed voting changes to the Department of Justice (DOJ) for approval;³ during that same period, DOJ blocked over 3,000 discriminatory voting changes.⁴ This expanded Black voter pool led to the diversification of the local and federal electorate and the historic election of local Black mayors, council members, state legislators and members of Congress, among others.⁵ In addition to increased voter turnout, studies have shown that the VRA also led to better economic outcomes,⁶ improved schools⁷ and lower arrest rates⁸ for Black people. *Shelby County* thus not only impacted the ballot but also Black communities’ ability to access an equitable society.

As outlined in our previous submissions to Congress,⁹ the damning effects of the *Shelby County* decision on the voting rights landscape were immediate and pervasive—particularly for BIPOC residents in the South, which includes several states previously subject to preclearance.¹⁰ Within a day of the decision, Alabama advanced a restrictive photo ID law,¹¹ with Mississippi, Texas and North Carolina following closely behind.¹² Importantly, the *Shelby County* decision not only allowed state legislatures to advance voting changes that would have previously been subject to preclearance, it also created a culture where states could think expansively about employing a broad spectrum of strategies to suppress the BIPOC vote. Beyond discriminatory photo ID laws, Southern states moved swiftly to implement additional voter suppression schemes—such as discriminatory voter roll purges, mass polling place changes, racial and partisan gerrymandering during the redistricting process, new vote-by-mail and early voting restrictions, and more.

Unfortunately, this pervasive assault on BIPOC voting rights has continued to the present day. In 2021, at least 19 states passed 54 laws restricting access to voting¹³—the highest number of laws in a decade—that appeared largely motivated by racial factors.¹⁴ Several of these bills have been omnibus—such as Georgia’s SB 202 (2021) and Florida’s SB 90 (2021)—allowing states to suppress voting rights in a number of ways with a single pen stroke. As of January 2023, state legislatures in approximately 32 states pre-filed or introduced 150 bills to restrict voting.¹⁵ Significantly, this ongoing attack on democracy has been coupled with the severe underfunding of election infrastructure, placing increasing pressure on

Between 1965 and 2013, jurisdictions subject to VRA preclearance submitted over half a million proposed voting changes to the Department of Justice (DOJ) for approval. During that same period, DOJ blocked over 3,000 discriminatory voting changes.



understaffed election officials to carry out effective elections with limited resources.

In a glimmer of hope, the COVID-19 pandemic provided an opportunity to make voting more accessible in light of social distancing restrictions, with states across the nation—including in the South—exploring novel methods to protect access to the vote. Indeed, COVID-19, and the responsive shifts by states to protect access to the ballot, shows that where there is political will, change can occur. Due to a plethora of innovative strategies to protect access to the franchise—including expanded early voting, increased vote-by-mail options and ballot postage¹⁶—the 2020 general election had the highest voter turnout this century.¹⁷ Importantly, such efforts also took place in some Deep South states, albeit largely in response to public pressure and litigation.¹⁸ For example, Mississippi expanded curbside voting access and set a process for curing ballot signature issues (after being sued)¹⁹ and Alabama loosened some absentee voting requirements.²⁰ These states, however, quickly tightened restrictions²¹ after the public emergency passed.²²

Due to a plethora of innovative strategies to protect access to the franchise—including expanded early voting, increased vote-by-mail options and ballot postage—the 2020 general election had the highest voter turnout this century.

Consequently, for most of the past decade, BIPOC voters in the Deep South have been subject to hours-long voter lines, distant polling locations, decreased windows in which to vote, disproportionate disenfranchisement due to felony convictions, strict yet unclear voting requirements, and other barriers to the ballot. And importantly, this voter suppression movement has ensnared a broad swath of BIPOC voters with unique voting needs—including those with disabilities, the elderly and others. Further, while these efforts have been largely targeted for generations to dismantle the Black vote—given the unique history of racism that African Americans have with this country and the franchise—they have also deeply affected the political participation of other communities of

color, including members of the Latino, Asian and Indigenous communities.

From the end of slavery to present day, significant advancements in Black political participation and representation have often been followed by a swift backlash and retrenchment of rights. It happened after Reconstruction. It happened after the election of the nation's first Black president. And it is happening today as we stand at a critical moment where our democracy is under attack on many fronts after the decade-long erosion of BIPOC voter access—namely, Black voter access—sparked by the *Shelby County* decision.

To be sure, the U. S. Supreme Court's recent decision in *Allen v. Milligan* is a significant win for voting rights and democracy in our country. In this case, which, like *Shelby County*, originated in Alabama, Alabama Forward's executive director and chief field and campaign strategist, Evan Milligan and Khadijah Stone, respectively, as well as other impacted voters challenged Alabama's 2021 congressional map. Plaintiffs alleged that even though Alabama's Black population of 27% should provide them with the opportunity to elect a representative of their choice in two districts, the map, as drawn, cracked this community in such a way that they can only effectively do so in one congressional district, violating VRA Section 2. Although a district court agreed with the plaintiffs, mandating Alabama to create a second Black opportunity district before the midterms, the state appealed. On June 8, 2025, the U.S. Supreme Court sided with plaintiffs, affirming the district court's ruling that Alabama's map diluted Black voting strength in violation of VRA Section 2. Not only does this decision require that Alabama redraw its map, but it may positively impact the court's decision in other pending redistricting cases before it, including *Ardoin v. Robinson*, a challenge to Louisiana's redistricting maps as violative of the VRA,²³

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and a redistricting case concerning South Carolina's congressional map it agreed to hear in May 2023.²⁴

Notwithstanding the Supreme Court's decision in *Allen v. Milligan*, it is worth noting that the court allowed the 2022 election to proceed with discriminatory maps pending the decision it rendered months later. Black voters in Alabama—and across the country—deserve equal representation in government, which helps ensure communities receive critical resources and funding for schools, libraries, affordable housing, jobs, safe infrastructure, green space, and access to affordable health care. Although the ruling reaffirms the right to fair representation for Black communities, we still have much work to do to ensure it becomes a reality.

At the federal level, Congress has yet to pass legislation to restore the Voting Rights Act to its full power—including a revised coverage formula. And it has failed to do so at a time when partisanship is at a fever pitch, with several members of Congress challenging the very nature of democracy through support for the violent Jan. 6, 2021, insurrection and conspiracies around the 2020 presidential election. And, as mentioned, state legislatures have taken advantage of no federal preclearance by ushering in waves of voter suppression bills. As we look toward the 2024 general election, equipped with the knowledge that the 2020 census data shows that our nation's diversity is on the rise, it is imperative that we develop a plan to protect and support BIPOC political participation and representation in the face of these myriad barriers. Indeed, the future of our democracy may depend on it.

This report serves as a foundation for how advocates for democracy in the Deep South can move toward this vision of building, supporting and protecting the political participation and representation of Black people and other people of color in the region. First, it provides an outline of the current voting rights landscape throughout the South—including the numerous barriers to the ballot BIPOC voters face. Second, it explores the ever-expanding overlap of democracy and the criminal legal system. Third, it discusses the persistent underfunding of election administration and the ongoing attacks faced by election administrators. Fourth, this report highlights the first redistricting cycle since *Shelby County*, uplifting how state legislatures have attempted to use this process for partisan gains to the detriment of BIPOC voters. Last, and most importantly, the report advances bold policy proposals to outline the path forward for fortifying political participation and representation in the Deep South for communities of color for the next decade—and beyond. ●

The Fix Is In

A Decade of Voter Suppression
in the Deep South

“If you’re too sorry or lazy to get up off of your rear and to go register to vote, or to register electronically, and then to go vote, then you don’t deserve that privilege. As long as I’m secretary of state of Alabama, you’re going to have to show some initiative to become a registered voter in this state.”

John Merrill
Former Alabama Secretary of State

In the immediate aftermath of the *Shelby County* decision, Southern states moved swiftly to suppress the BIPOC vote.

From enacting strict photo ID laws to closing polling places in majority-BIPOC communities to breeding a culture of fear and intimidation, state legislatures have worked strategically to limit the voting strength of communities of color. As a result, these communities have faced significant barriers in attempting to cast their ballot. In fact, Alabama and Mississippi are two of the hardest states to vote in nationwide—with Mississippi ranking as the second hardest state to vote in the U.S.²⁵ While not exhaustive, this section outlines some of the voting barriers BIPOC communities in the Deep South have had to overcome over the past decade, with a specific focus on (1) photo ID laws, (2) polling place changes, (3) voter roll purges, and (4) voting method restrictions.

Photo ID Laws

Photo identification laws, which hearken back to tactics used in the Jim Crow South, are a prevalent voter suppression tool. Despite the 24th Amendment's prohibition on poll taxes, photo ID laws potentially stand in for such restricted practices by acting as a barrier and additional hurdle to the vote²⁶—particularly for voters of color because they are less likely to have voter ID.²⁷ As of March 2023, 36 states have photo ID requirements, with nine states, including Georgia and Mississippi, having the strictest photo ID laws in the country.²⁸ Under vague declarations of protecting against baseless “voter fraud,”²⁹ state legislatures have used photo ID laws to disenfranchise large swaths of state populations. For example, at the time that Alabama implemented its strict voter ID law for the 2014 primaries, the secretary of state reported that about 20% of Alabama's registered voters—or about 500,000 people—lacked a driver's license or non-driver ID, with only an estimated half of that group having another acceptable form of identification.³⁰ The state of Alabama made this deficit worse with its subsequent announcement in 2015 of the closure of 31 driver's license offices largely concentrated in the “Black Belt,”³¹ this move was only partially reversed after public outcry.³² As another example, after strong Democratic turnout during the 2020 elections,³³ Georgia acted urgently to pass SB 202, an omnibus law that included new voter ID requirements. At the time, about 3.5% of Georgia's 7.8 million registered voters did not

have a driver's license or state ID number—more than half of whom were Black and lived in mostly Democratic-leaning counties.³⁴

While there is some disagreement as to the impact that photo ID laws have on elections,³⁵ there is evidence that racial animus may have a role in driving these bills. As point of fact, in striking down a North Carolina photo ID law in 2016, a federal appeals court noted that the law targeted African Americans “with almost surgical precision.”³⁶ Beyond racial intent, there have also been examples of photo ID laws being used for partisan purposes, at least ostensibly. In instances where Republican legislatures have been alleged to have passed photo ID laws to suppress political opposition, Black voters have been swept up in these efforts because they have historically voted Democratic.³⁷ As proof, a report by special counsel during the impeachment proceedings of Gov. Robert Bentley found that the aforementioned closure of 31 Alabama driver's license offices was intended “to be rolled out in a way that had limited impact on Governor Bentley's political allies.”³⁸ No matter what the explanation, however, the reality is that photo ID laws are a barrier to the vote that have a disproportionate impact on people of color.

Polling Place Changes

The ability to easily access a polling place to cast your vote is a critical part of the democratic process. By the same token, the manipulation of polling place numbers and locations can have an impact on BIPOC voting strength. As one can imagine, having to travel long distances to stand in long lines due to polling place closures can potentially pose a chilling effect on the vote. For example, between 2012 to 2018, Georgia county election officials shut down 8% of the state's polling places and relocated almost 40% of precincts. An analysis by the *Atlanta Journal-Constitution* shows that precinct closures and longer distances to the polls likely prohibited an estimated 54,000 to 85,000 voters from casting ballots on Election Day in 2018—and Black voters were 20% more likely to miss elections due to long distances.³⁹ Between 1982-2005, DOJ had outright objections to 31 out of 94,261 proposed polling place changes and sent more information requests for 1,927 of the proposed changes, sustaining 29 objections after receiving this information.⁴⁰ While these numbers may seem relatively low, research shows that, beyond objections, DOJ used other tools to ensure state compliance with the VRA—including more information requests.⁴¹ Overall, states subject to federal preclearance submitted 126,751

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polling place changes to the DOJ for approval between 1965-2013—more than any other type of voting change.⁴² Post-*Shelby County*, however, states across the Deep South were completely free to begin closing polling places with impunity. In its report *Democracy Diverted*, The Leadership Conference Education Fund found 1,688 polling place closures between 2012-2018 in jurisdictions previously subject to federal preclearance.⁴³ These closures have a distinct focus in the Deep South: During this same time period, Mississippi, Louisiana, Alabama and Georgia closed 508 polling places alone. Georgia also had seven out of the top 10 closing counties by percentage;⁴⁴ thankfully, Georgia's attempt to close seven of its nine polling locations in Randolph County, a majority-Black county, based on claims of ADA accessibility, was successfully blocked after local and national outcry.⁴⁵ Thus, as highlighted throughout *Democracy Diverted*, a heightened level of scrutiny of polling place closures is warranted given our nation's history of voter suppression and the pronounced impact that polling place changes have on communities of color.

Polling place closures were a top issue during the 2022 midterms—notably around transportation to polling sites. After Hurricane Ian devastated Florida in 2022, Lee County consolidated almost 100 polling locations into a dozen “super sites.”⁴⁶ This action was swiftly condemned by voting rights advocates, who noted that polling places were closed in predominantly Black communities, requiring these residents to travel long distances to cast their votes in faraway locales with limited transportation options.⁴⁷ And even with the mass voter turnout in the Georgia midterms, there were complaints of a lack of transportation options (whether car, bus or otherwise) to reach polling locations,⁴⁸ with some relying on local organizations to get to the polls.⁴⁹ This sentiment was shared by Marrow Woods, a college student organizer with the Georgia Youth Justice Coalition. Woods, who lives south of Atlanta where public transportation is unreliable, found themselves in need of transportation options during the 2022 midterms. If not for their college stepping in to provide students with bussing to the polls, they are not sure how they would have been able to vote. And, even with this resource, the voting process was difficult. According to Woods, it was difficult to find accurate and up-to-date information on polling locations, with them noting that “a lot of places that we actually ended up going to with the school were

not places that were listed on their websites.” As a determined college student, Woods was ultimately successful in casting their vote with the help of their college and community, but it should not take this level of perseverance to exercise the fundamental right to vote.

Further compounding the issue, poor community outreach and public education has left many voters in the dark about polling place closures. In Alabama, voting rights groups in 2022 urged then-Secretary of State John Merrill to “publish an accurate, uniform and comprehensive list of polling locations statewide to mitigate voter confusion at the polls and the disenfranchisement that often follows.”⁵⁰ In Mississippi, county election officials made almost 100 polling place location changes between 2020 and 2022, with most of these changes going unreported on the state database used to provide polling place information to voters.⁵¹

Voter Roll Purges

In an ideal world, election officials would maintain accurate voting lists—pursuant to federal legislation like the National Voter Registration Act (NVRA) and the Help America Vote Act (HAVA)—using reliable and transparent processes to remove ineligible voters from their voter rolls. Voter purges, however, in which inappropriate procedures lead to the removal of eligible voters,⁵² have taken on new significance post-*Shelby County* as a voter suppression tool. The practice of voter purging is particularly pernicious because, all too often, voters do not realize they have been purged from the polls until they attempt to vote,⁵³ resulting in them missing deadlines to correct the issue and being dissuaded from attempting to vote in future elections. Bolstered by *Husted v. A. Philip Randolph Institute*, a 2018 Supreme Court decision that permitted states to purge infrequent voters from their rolls,⁵⁴ Southern states have taken to voter purging as a tool to manipulate the electorate. According to a Brennan Center analysis, jurisdictions no longer subject to preclearance had higher voter purge rates for the two election cycles between 2012 and 2016 than jurisdictions that were not covered by Section 5 in 2013.⁵⁵ Indeed, 2 million fewer voters would have been purged during this time if these formerly precleared states purged at the same rate as those not previously subject to preclearance.⁵⁶ In 2017, Georgia Secretary of State Brian Kemp purged over half a million voters in a single day—with an estimated 107,000 of these people removed

Over the past decade, Southern states have passed numerous bills to suppress the BIPOC vote. By way of example, the lists to the right outline some of the provisions of two omnibus bills passed in Georgia (SB 202) and Florida (SB 90).



Georgia

SB 202 (2021)

- Reduces period to request vote-by-mail ballot by over 50% and shortens runoff period.
- Adds new ID requirement to vote-by-mail application.
- Places restrictions on drop box locations and hours.
- Bans approaching voters waiting in line with food and water.
- Allows for state takeover of local election boards.



Florida

SB 90 (2021)

- Adds new ID requirement for vote-by-mail ballot applications.
- Limits drop box locations and hours.
- Adds restrictions to third-party voter registration drives.
- Bans third-party funding for elections.
- Makes it a misdemeanor for a voter to possess more than two vote-by-mail ballots, not including their own or the ballot of an immediate family member.

merely because they had not voted in prior elections.⁵⁷ Notably, this purge occurred before Kemp's closely watched gubernatorial run against Stacey Abrams, a Democratic candidate vying to be the first Black female governor in the country.⁵⁸

In 2012, Florida attempted to remove 182,000 allegedly ineligible noncitizens from the voter rolls, later decreasing this number to 2,600.⁵⁹ Outcry soon followed, with many arguing that the determination process ensnared eligible voters,⁶⁰ was an attempt to disenfranchise Latino voters,⁶¹ and was error-prone.⁶² Strikingly, Florida attempted to purge these voters, at the direction of Republican Gov. Rick Scott, in advance of the 2012 presidential election where Florida was a key state for President Barack Obama's reelection.⁶³ In response, the Department of Justice and advocates sued the state in several lawsuits, with claims ranging from violations of the NVRA,⁶⁴ which prohibits voter purges within 90 days of a federal election, to violations of the VRA based on Florida's failure to seek preclearance for the plan.⁶⁵ Ultimately, it is estimated that around 85 noncitizens were removed from the polls as of Aug. 1, 2012.⁶⁶ Although a federal court in 2014 held that the 2012 purge had violated the NVRA, the battle had just begun.⁶⁷ While Florida's median voter purge rate was 0.2% between 2008 and 2010, this number skyrocketed to over 7% between 2016 and 2018.⁶⁸ Florida, Alabama and Louisiana's withdrawals in 2022-2023⁶⁹ from the Electronic Registration Information Center (ERIC), a nonprofit organization consisting of state election officials that assists states in keeping accurate voter rolls,⁷⁰ also signals the threat of increased voter purges in advance of consequential elections.

Voting Method Restrictions

Over the last decade, Southern states have also implemented restrictions around how and when voters can vote—particularly in the areas of early voting and absentee voting (vote by mail).

Early voting has been a central part of the Black voting experience for generations, with “Souls to the Polls” efforts across the country serving as a communal democracy exercise. Early voting, however, is extremely restricted in some Southern states: For example, Alabama and Mississippi, two states with substantial Black populations,⁷¹ fail to offer pre-Election Day in-person voting options for all voters.⁷² And while Georgia provides early voting—which was used by voters in record numbers during the 2020 and 2022 election cycles—its process is not without its

issues. SB 202 cut the state's runoff period by about half, resulting in statewide early voting days going from 17 days to five.⁷³ As a result, and exacerbated by polling place closures, some voters had to wait over two hours to cast their vote during the 2022 midterms, with additional voters likely dissuaded by the long lines from voting at all.⁷⁴ Significantly, SB 202 also authorized partisan control of local election boards, leading some congregations to move their “Souls to the Polls” efforts to Saturday after several counties eliminated Sunday voting.⁷⁵

The absentee voting process in the Deep South is also full of potential land mines. On one hand, the process can be particularly onerous. In Mississippi, for example, most absentee voters are only eligible to vote in person and must appear before a circuit clerk or municipal clerk to cast their vote.⁷⁶ The state has a short list of voters who can vote absentee by mail, including individuals who are 65 or older, have a disability, or temporarily live outside the county of residence. Those who are required to be at work or out of town on Election Day must vote absentee in person, creating a potentially burdensome process for these voters that contradicts the very purpose of voting absentee.⁷⁷ Alabama also requires voters to satisfy certain requirements in order to be eligible to vote absentee;⁷⁸ while pending 2023 legislation would provide for no-excuse absentee voting,⁷⁹ Alabama legislators have failed to pass similar legislation in previous sessions.⁸⁰ Further, even where voters have done all they can to secure an absentee ballot, there is no guarantee that it will arrive in time for their vote to count. Advocacy organizations, including the Southern Poverty Law Center, sued Cobb County, Georgia, twice for failing to send ballots to as many as 20,000 voters during the 2022 election.⁸¹ This litigation came after the passage of SB 202, which slashed the request and response times for absentee ballots, placing an undue burden on voters and election officials.⁸² Florida's passage of SB 90 also led to the cancellation of hundreds of thousands of Floridians' mail-in ballot requests after the new law scrapped voters' automatic ballot requests.⁸³ The sudden change left local election officials scrambling to inform voters of the new change so that they could renew their requests.⁸⁴ Lastly, even though the pandemic use of absentee ballot drop boxes during the 2020 election led to fewer absentee ballot rejections due to late submission,⁸⁵ Georgia's SB 202 restricts drop box hours and locations, prohibits drop boxes from being outside, and increases county election administration costs by requiring in-person security.⁸⁶ ●

The Handcuffed Ballot

The Intersection of the Criminal Legal System
and the Democratic Process

“Formerly incarcerated people] are expected to pay fines and court costs, and submit paperwork to multiple agencies in an effort to win back a right that should never have been taken away in a democracy.”

Michelle Alexander
*The New Jim Crow: Mass Incarceration
in the Age of Colorblindness*

Since the passage of the Reconstruction amendments, states have employed innovative strategies to bypass federal law to suppress the Black vote and that of other communities of color.

One stealthy way they have done so is through integrating the criminal legal system—which has disproportionately impacted people of color—into the democratic process. This practice has particularly impacted Black people, who, due to the country’s history of racism and oppression, have largely borne the destructive impact of the criminal legal system and its myriad collateral consequences.⁸⁷ Not only does arresting and imprisoning people of color remove them from the voting process, but it keeps them out of this process for extended periods of time—sometimes forever—after a felony conviction. In this section, we outline both the historic practice of felon disenfranchisement over the past decade as well as a new emerging attack on the democratic process: the criminalization of the voting process.

Felon Disenfranchisement

Felon disenfranchisement is a Jim Crow-era voting tactic that has persisted to the present. First employed as a tool after the Civil War to prevent newly enfranchised, formerly enslaved people from voting,⁸⁸ states often prohibited those convicted of “crimes of moral turpitude” from voting.⁸⁹ This categorization—which was broad to provide for the targeting of Black voters⁹⁰—led to generations of Black citizens being denied access to the franchise. According to The Sentencing Project, an estimated 4.6 million Americans are currently barred from voting because of a criminal conviction; one-third of those disenfranchised are Black⁹¹ despite Black people making up only 13% of the population.⁹² Florida continues to be the nation’s felon disenfranchisement leader as of 2022, taking away the right to vote from around 1.1 million residents; Alabama and Mississippi also disenfranchise over 8% and 10% of their adult populations, respectively.⁹³

As a result, the voices of broad swaths of largely BIPOC communities in the Deep South have been erased from our democracy. And this omission has the power to potentially change elections: Experts have long projected that the disenfran-

chisement of Florida voters with felony convictions may have changed the result of the closely contested 2000 presidential election.⁹⁴ Even when those with felony convictions have had their right to vote restored, there are ongoing barriers. In Florida, for example, advocates on both sides of the aisle⁹⁵ fought hard for the approval of Amendment 4 in November 2018, a historic ballot initiative approved by 64.55% of voters⁹⁶ that restored the right to vote to approximately 1.4 million people convicted of certain felonies at the end of their sentences.⁹⁷ This approval had a profound impact on Florida’s Black residents, who disproportionately had criminal convictions.⁹⁸ But only seven months later, Florida passed SB 7066, which required reenfranchised individuals to pay off all legal financial obligations—including fines, fees, court costs and restitution—before their right to vote could be restored.⁹⁹ For many, this new financial hurdle to the vote potentially equaled permanent disenfranchisement.¹⁰⁰ And a lack of public education on the implementation of the new law led to confusion for both potential voters with criminal convictions (who were unclear on what fines and fees they may owe)¹⁰¹ and election officials (who had to respond quickly to changing rules)¹⁰² in the face of the consequential 2020 election. This confusion and inability to pay clearly had a chilling effect on voter turnout—as of October 2020, two years after Amendment 4’s approval, approximately 67,000 people with criminal convictions (out of the estimated 1.4 million) who had their right to vote restored had registered to vote.¹⁰³ Legal challenges to the law have been unsuccessful,¹⁰⁴ and further complications emerge seemingly every year. For example, an election law approved by the Florida Legislature in 2023, SB 7050, includes a provision that voter information cards are only proof of registration, not proof of eligibility to vote; advocates have condemned this language, arguing that this language further puts the onus on people with criminal convictions to wade through a confusing bureaucratic process to determine their voting eligibility.¹⁰⁵

Alabama’s process has also led to voter confusion, with the state disenfranchising people historically for “crimes of moral turpitude” without defining what offenses were included in that category. As a result, in the past, registrars had broad discretion to employ the ban, leading to a patchwork quilt of implementation where whether you had the right to vote or not was largely dependent on the whim of local officials.¹⁰⁶ It was not until 2017 when the state passed legislation outlining the list of offenses that barred the right to vote.¹⁰⁷ Even with this increased clarity, how-

According to The Sentencing Project, an estimated 4.6 million Americans are currently barred from voting because of a criminal conviction; one-third of those disenfranchised are Black despite Black people making up only 13% of the population.

Total Voting-Eligible Adults Disenfranchised Across the Deep South in the 2020 and 2022 Elections

Adults Affected % of total population	All Adults		Black Adults		Latino Adults	
	2020	2022	2020	2022	2020	2022
Alabama	328,198 (8.94%)	318,681 (8.59%)	149,716 (15.55%)	143,557 (14.73%)	2,947 (4.20%)	3,775 (4.91%)
Florida	1,132,493 (7.69%)	1,150,944 (7.52%)	338,433 (15.42%)	291,811 (12.78%)	90,816 (3.18%)	106,709 (3.42%)
Georgia	275,089 (3.79%)	234,410 (3.13%)	145,601 (6.27%)	124,858 (5.17%)	8,551 (2.64%)	7,467 (1.98%)
Louisiana	76,924 (2.23%)	52,073 (1.50%)	47,951 (4.41%)	32,865 (3.01%)	247 (.24%)	213 (.20%)
Mississippi	235,152 (10.55%)	239,209 (10.69%)	130,501 (15.96%)	129,495 (15.74%)	1,719 (4.80%)	1,695 (4.07%)
Total	2,047,856	1,995,317	812,202	722,586	104,280	119,859

Approximately 2 million people were disenfranchised due to a felony conviction in the Deep South in both the 2020 and 2022 elections.

ever, Alabama voters who do not fall within those offenses must still apply to the Alabama Bureau of Pardons and Paroles for a certificate of eligibility to register to vote and must pay all fines, fees and other costs before receiving their certificate.¹⁰⁸ A bill introduced in the 2023 legislative session, SB 21, would eliminate the application and certificate requirement and allow for rights restoration where an individual pays fines and restitution and is on a payment plan or a community service plan for remaining costs.¹⁰⁹ And, again, the onus has been on potential voters to determine their eligibility, with some turning to litigation to do so—in 2022, a federal judge ruled that Alabama Secretary of State John Merrill had to provide the names and contact information of people barred from voting due to a criminal conviction to a local nonprofit that had requested it for outreach purposes.¹¹⁰

This confounding process is not unique to Alabama, however. Not to be outdone, many Mississippians who want to reinstate their eligibility to vote must receive a pardon from the governor or a two-thirds vote of both legislative houses, both of which have low success rates.¹¹¹ Sidney Smith III, a resident of Harrison County, Mississippi, understands this complicated process all too well. Smith was stripped of his voting rights in 1996

Source: The Sentencing Project

due to a felony conviction and “never thought it was possible” to regain his voting rights. After going to his local election officials before Election Day to ensure he would have no issue voting, Smith ran into a major hurdle: **His local precinct was still showing him as ineligible.** Only with the help of a local representative, who was able to guide him through the process and support him in gathering the necessary paperwork, was Smith able to get this precious right restored. Unfortunately, this is not the case for many potential voters with criminal convictions, who, frustrated with the numerous administrative hurdles, may opt out of the process altogether.

Adding an element of fear to this confusion, Florida has also created a state agency that has further dissuaded people with criminal convictions who may be eligible to vote from doing so. In early 2022, bolstered by the conspiracy of a stolen election and unsupported voter fraud claims, Florida established its Office of Election Crimes and Security.¹¹² While the ostensible purpose of the office is to review fraud allegations and conduct preliminary investigations, critics have attacked it as an unchecked attempt to crack down on the Black vote.¹¹³ In August 2022, Florida Gov. Ron DeSantis announced that the office’s investigation had led to the arrest of 20 individuals for

voter fraud who had voted despite having murder or felony sex convictions—convictions that had been excluded from Amendment 4’s purview.¹¹⁴ Despite four of these cases being dismissed and one resulting in a plea deal with a small fine,¹¹⁵ and body camera footage that showed many of those caught up in the sweep did not realize they were ineligible to vote, with some even being told they were cleared by election officials,¹¹⁶ the damage was done. As a result of the office’s actions, some voters with criminal convictions, rather than risking further criminal legal system involvement, have opted out of the democratic process altogether.¹¹⁷ This use of state authority to suppress the vote for people with criminal convictions has also taken deep root in Georgia. On April 27, 2022, Governor Kemp signed SB 441 into law, a bill that authorizes the Georgia Bureau of Investigation (GBI) to investigate election crimes.¹¹⁸ As of November 2022, the GBI has not initiated a single investigation, but the potential chilling effect it has created remains.¹¹⁹

The Criminalization of Voter Access

Not satisfied with disenfranchising those with criminal convictions, Southern state legislatures have also used the threat of the criminal legal system to target voter access. Rather than being tied to actual wrongdoing, this targeted criminalization effort’s goal is to suppress the vote for partisan gains: in the aftermath of the 2020 election’s historic voter turnout, 14 states enacted legislation criminalizing elections—including Alabama, Georgia and Florida.¹²⁰ This section outlines how state legislatures have imported the criminal legal system into the democratic process by targeting voter access.

Given our nation’s history of negative law enforcement interactions with Black communities, using the threat of the criminal legal system against voters in those communities, especially in the current landscape of confusing voter rules and a lack of public education about the same, has the potential to chill engagement in the democratic process.

States have engaged in an intentional effort to criminalize voting to manipulate election outcomes in the Deep South. Even though Governor DeSantis himself said that “Florida’s 2020 election season was a resounding success and model for the nation,”¹²¹ he subsequently pushed for the creation of the Office of Election Crimes and Security to root out alleged “voter fraud.” Within the same bill that created the office, SB 524, the Florida Legislature increased the penalty for ballot collection from a misdemeanor to a third-degree felony.¹²² Given the ongoing importance of “Souls to the Polls” efforts, and the history of churches collecting ballots of elderly congregants who might not otherwise be able to make it to the polls, this provision has marked some as particularly racially motivated. More broadly, given our nation’s history of negative law enforcement interactions with Black communities, using the threat of the criminal legal system against

voters in those communities, especially in the current landscape of confusing voter rules and a lack of public education about the same, has the potential to chill engagement in the democratic process.¹²² Ballot collection, with limited exceptions, was also made a misdemeanor offense in Mississippi in 2023,¹²³ and Alabama advanced a bill through the legislature in 2023 that would make such conduct a felony.¹²⁴

Further, Deep South states have moved swiftly to enact criminal penalties for those who provide voter support—a move that has seemed particularly targeted to stymie the work of nonpartisan, Black-led organizations. For example, one of the most damning provisions of Georgia’s omnibus 2021 voter suppression bill SB 202 was its ban on food and drink distribution at the polls. Given the long voter lines in the state’s Black communities—already a result of other voter suppression efforts like polling location changes concentrated in these neighborhoods and shortened early voting periods—advocates have argued that this move was specifically targeted to suppress the Black vote. Indeed, for years, churches and civic organizations in these communities have viewed it as part of their civic duty to provide this type of support to voters at the polls. And this targeted effort has not been subtle. Black Voters Matter, a leading Black-led voting rights group, was investigated for violating SB 202’s line-relief ban, even though the events at issue took place in 2020; the group was later cleared of any wrongdoing.¹²⁵ Recognizing the discriminatory nature of this law, the SPLC and other advocacy organizations, as part of a larger lawsuit over SB 202, filed a preliminary injunction motion to stop the line-relief ban. A federal judge denied the motion as to the 2022 elections; in April 2023, plaintiffs again filed a preliminary injunction motion to stop the ban in future elections.¹²⁶ In addition to the line-relief ban, SB 202 contains a number of other provisions—such as attaching criminal penalties to assisting a voter in returning their completed absentee ballot application and allowing people outside of a limited list to observe the marking of the voter’s absentee ballot—that appear aimed at criminalizing nonpartisan get-out-the-vote organizations that have historically assisted voters throughout the voting process.¹²⁷ In 2021, Florida also passed omnibus bill SP 90, which included a broad solicitation ban that many believed could be interpreted as a line-relief ban.¹²⁸ SB 90 was swiftly litigated; in April 2023, the 11th Circuit upheld the bill but, in a rare moment of hope, struck a portion of the provision that had been relied on to potentially ban line relief as “unconstitutionally vague.”¹²⁹

Underfunded and Under Attack

The Targeting of Election Administration
Over the Last Decade

“As concerns about the protection of ... the integrity of our election systems become an increasingly prominent part of our national dialogue, we must consider some important questions. It is time to ask: What kind of nation—and what kind of people—do we want to be?”

Eric Holder
Former U.S. Attorney General

The assault on BIPOC voting rights in the Deep South has also included an attack on the administration of elections.

This onslaught has been pervasive: Between 2021 and 2022, 28 states—including Alabama, Mississippi, Georgia and Florida—passed legislation that interfered with the nonpartisan and fair administration of elections.¹⁵¹ These bills range from legislation that provides oversight authority for partisan actors to bills that expose election officials to criminal penalties and authorize standardless review of election numbers.¹⁵² The increasing assault on our election administration systems has also been coupled with the historic underfunding of election infrastructure in our nation. Over the past decade, election officials and workers have been expected to carry out an ever-expanding list of tasks—including voter support, tallying of votes and machine operation—with limited resources, and in the face of ever-changing voting laws. And, increasingly, they have been asked to do so in the face of ongoing threats of violence and harassment. What is more, instead of using innovative strategies to bring needed resources to local election administration, state legislatures have passed bills to eliminate critical funding opportunities, like third-party funding. This section explores the current attack on election administrators in the South and how these attacks have been accompanied by chronic underfunding.

Attacks on Election Administrators

Buoyed by 2020's rampant spread of misinformation and disinformation related to "stolen elections" and the "Big Lie," state legislatures across the nation—including in the Deep South—have relied on unsubstantiated threats of "voter fraud" and security concerns to attack the administration of elections. These attacks have included unprecedented threats against election officials, causing many to fear for their safety. According to a 2022 Brennan Center survey, 1 in 6 local election officials have experienced threats.¹⁵³ More broadly, this landscape of harassment has included political attacks. In Georgia, omnibus bill SB 202 authorized the State Election Board to take over county election boards through investigations that could lead to their suspension and replacement with a Board-selected appointment.¹⁵⁴ Republican lawmakers have used this provision to target counties with large Black populations in a blatant effort to manipulate

and suppress the vote in these communities. Fulton County, one of the state's most populous counties, which also has a large Black Democrat population,¹⁵⁵ became one of the early counties targeted under the new law's takeover provision. Thankfully, early in 2023, the state panel tasked with reviewing Fulton County's election board found that it should not be suspended or replaced under the new law.¹⁵⁶

Election workers have also been targets of the ongoing assault on our democracy. In 2018, election workers in Broward County, Florida, which has one of the largest Black populations in South Florida, were descended upon by Trump supporters shouting about attempts to "steal the vote" during that year's election at a local election office.¹⁵⁷ In the aftermath of Trump's 2020 loss in Georgia, Georgia election workers also reported receiving harassing messages, including threats to bomb polling locations.¹⁵⁸ Threats to safety have also come from within the election worker community: Miami-Dade County in Florida has had several individuals with ties to the Proud Boys, an SPLC-identified hate group, register as poll workers.¹⁵⁹

Overall, these increasing threats have led many of those who administer our elections to leave the profession: According to a 2023 Brennan Center survey, 12% of local election officials began to serve after the 2020 election cycle and a further 11% are very or somewhat likely to leave their jobs before the 2024 election.¹⁶⁰ This exodus has resulted in local jurisdictions across the nation scrambling to fill vacancies, leaving our election administration system vulnerable.¹⁶¹

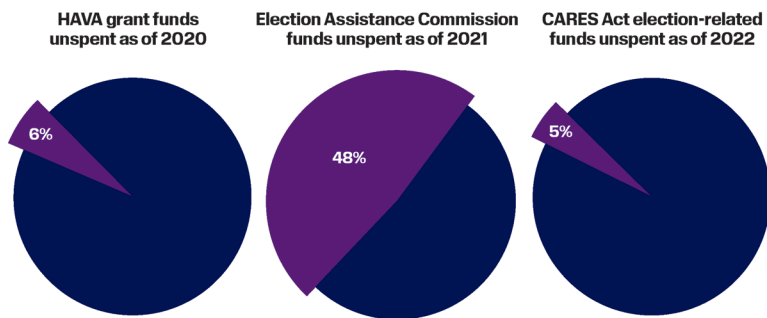
Historic Underfunding of Elections & Stymieing of Third-Party Support

Local election officials across the nation are responsible for ensuring that elections are carried out safely and securely. The requirements of election administration are numerous and include management of voter registration; operating voting machines; handling of ballot disputes; voter education and outreach; and conducting local, state and federal elections while implementing election-related policies. On top of all of these responsibilities, election officials are also required to carry out elections with an aging election infrastructure, including outdated voting machines,¹⁶² vulnerable election websites,¹⁶³ and inaccessible polling places.¹⁶⁴

Despite these myriad responsibilities, however, the underfunding of election administration has been a recurring concern over the past decade.

Bills interfering in election administration range from legislation that provides oversight authority for partisan actors to bills that expose election officials to criminal penalties and authorize standardless review of election numbers.

Inconsistent Use of State and Federal Funding to Support the Administering of Elections



Source: MIT Election Data + Science Lab, et al.

State and federal funding has been inconsistent. And while logic would dictate that states would welcome increased funding to administer their elections effectively, this has not been the case.

According to the Presidential Commission on Election Administration in its 2014 report, the “most universal complaint of election administrators in testimony before the Commission concerned a lack of resources,” and election administrators “have described themselves as the least powerful lobby in state legislatures and often the last constituency to receive scarce funds at the local level.”¹⁴² Since that time, local election officials have struggled to carry out comprehensive elections with limited financing. While it has been difficult for experts to determine the actual cost to conduct elections, estimates range from \$4 billion to \$6 billion in a “normal year,” with the special circumstances of the 2020 election resulting in an estimated \$10 billion expenditure.¹⁴⁶ No matter the exact number, one thing is certain: Current funding levels are insufficient. According to the Election Infrastructure Initiative, it will cost the United States an estimated \$53 billion over 10 years to modernize the country’s election infrastructure;¹⁴⁷ out of this total, the Deep South will need over \$6 billion for modernization.¹⁴⁸

Despite this glaring deficit, state and federal funding has been inconsistent. Local governments are largely responsible for admin-

istering elections; some states like Louisiana and Alabama pose a rare exception in that they receive some state funds when state candidates are up for election.¹⁴⁹ With this, federal support for election administration has been limited and reactive. For example, 94% of the money appropriated for election administration to support HAVA has been spent as of 2020; 48% of funds distributed in 2018 by the Election Assistance Commission to improve election security has also been spent as of 2021.¹⁵⁰ To respond to the evolving voting landscape during the COVID-19 pandemic, Congress also appropriated \$400 million in the CARES Act to support election expenses; as of 2022, 95% of these funds were spent.¹⁵¹ There have been recent efforts to increase federal funding for elections. In early 2023, Senate Democrats successfully advocated¹⁵² for the Department of Homeland Security, which has labeled election infrastructure as “a critical infrastructure subsector,”¹⁵³ to require recipients of its preparedness grants to spend at least 3% of the funding on election security.¹⁵⁴ That same year, Senate Democrats also reintroduced the Sustaining Our Democracy Act, which would provide \$20 billion over the next 10 years to states for election administration and infrastructure.¹⁵⁵

While logic would dictate that states would

In a healthy democracy, a public good as essential as election infrastructure should be publicly funded. However, in the absence of adequate public funding right now, localities should be able to access private funding from third parties to help shore up their crumbling infrastructure and our democracy.

welcome increased funding to administer their elections effectively, this has not been the case. Indeed, state legislatures across the Deep South have paradoxically eliminated opportunities for additional funding and then used the subsequent lack of funding to justify not expanding voting opportunities. For example, while former Alabama Secretary of State John Merrill cited associated costs as the reason the state does not have an early voting process,¹⁵⁶ in 2022 the state passed what has been referred to as the “Zuckerbucks” bill, which prohibits state and local election officials from accepting private donations to support election administration.¹⁵⁷ This type of political subterfuge is dangerous and deprives communities most in need of resources, which are largely BIPOC communities, from opportunities to fully engage in the democratic process.

In a healthy democracy, a public good as essential as election infrastructure should be publicly funded. However, in the absence of adequate public funding right now, localities should be able to access private funding from third parties to help shore up their crumbling infrastructure and our democracy. However, the ban on third-party funding for elections, critical funding to support cash-strapped jurisdictions, has not been limited to Alabama. During the 2020 elections, election officials across the country were in dire need of new funding to support election administration that was responsive to the pandemic’s impact. To respond to this need, third-party funders—including Facebook and others—stepped in,¹⁵⁸ infusing local jurisdictions with critical funding to support them in carrying out election administration. The demand for these funds was incredible: For example, one large private funder during the 2020 election distributed grants to nearly 2,500 election departments across 47 states.¹⁵⁹ According to local election officials, this “lifeline” funding¹⁶⁰ was critical to ensuring a successful election process in 2020. Yet, despite this effective outcome, Republican-controlled legislatures across the Deep South moved swiftly to end these critical funds after 2020.¹⁶¹ Since voting ended in 2020, 24 states have either prohibited, limited or regulated the use of private donations for elections—including Georgia, Florida,¹⁶² Mississippi¹⁶³ and Alabama; attempts by Louisiana to do the same have been repeatedly unsuccessful.¹⁶⁴ And this suppression tactic is intensifying. To complement its 2021 ban on these funds, Georgia passed SB 222 in 2023,¹⁶⁵ expanding those election officials covered by the ban and making violations of this law a felony.¹⁶⁶ ●

The Fight for Representation

Political Gamesmanship During the First Redistricting Cycle Since *Shelby County*

“Nobody’s free until everybody’s free. I am sick and tired of being sick and tired. If I fall, I’ll fall 5 feet, 4 inches forward in the fight for freedom.”

Fannie Lou Hamer
Voting and Women’s Rights Advocate

Redistricting is at the heart of American democracy. The redistricting process, wherein states redraw their voting districts every 10 years based on census data, is all about power—who has it, who does not, and who makes that decision.

Given that nearly every county in the U.S. has diversified in the last decade,¹⁶⁷ in an accurate redistricting process, state legislatures, responding to growing numbers of BIPOC communities in their states, would draw district lines in a way that allows these communities to elect a representative of their choice. Southern Republican-controlled state legislatures, however, recognizing this potential power loss, have used the redistricting process as a partisan weapon to suppress Democratic BIPOC political power through gerrymandering and other sophisticated tools. Historically, the VRA's preclearance requirement was able to stop this pernicious practice; the *Shelby County* decision ended this crucial federal oversight. As a result, the 2021 redistricting process was the first redistricting process without such protections, as was evident through state legislatures' brazen attempts to manipulate maps to diminish the voting strength of communities of color. And, while the 2023 *Allen v. Milligan* decision is a major win for preserving the power of the VRA in ensuring fair redistricting, the decision comes with the U.S. Supreme Court's caveat that its holding does not take up the continued "concern that [VRA] §2 may impermissibly elevate race in the allocation of political power within the States."¹⁶⁸

The VRA prohibits states from drawing district maps that have the effect of reducing or diluting minority voting strength.¹⁶⁹ This includes attempts to "pack" BIPOC voters into one district or "crack" them among several districts, effectively undermining their voting power.¹⁷⁰ Between 1965 and 2015, states subject to VRA preclearance submitted 11,603 redistricting changes for DOJ approval.¹⁷¹ And, of the 8,694 redistricting changes sent to DOJ between 1982 and 2005, DOJ made 588 outright objections, asked for more information in 1,254 instances, and sustained 246 objections after further review.¹⁷² Crucially, the erosion of preclearance

has meant that, rather than having an affirmative way to stop problematic proposed maps from advancing, challenges to redistricting maps can now only move forward after a map is in place.¹⁷³ This new process has led to a flurry of protracted litigation: Nationwide, two-thirds of all states have seen litigation over their redistricting maps.¹⁷⁴

This section explores the controversial 2021 redistricting process and the tactics the government has used to manipulate district lines.

Manipulation of the Redistricting Process

The redistricting process is critical to who controls political power. For example, due to partisan gerrymandering efforts during the 2021 redistricting cycle by Republican-controlled legislatures, the Republican Party was able to gain control of the U.S. House of Representatives.¹⁷⁵ A power struggle has thus emerged in the redistricting process, with BIPOC communities fighting courageously through the courts to achieve fair representation: During the 2021 redistricting cycle, there were a total of 46 lawsuits challenging congressional maps in 22 states.¹⁷⁶ Within this landscape, the Deep South had a particularly contentious redistricting experience, employing methods that both diluted BIPOC voting strength (in violation of the VRA) and prioritized using race as a predominant factor in the redistricting process without a compelling reason, also known as a "racial gerrymander" (in violation of the 14th Amendment). For example, in Florida, Governor DeSantis "hijacked" the redistricting process by vetoing the map passed by legislators, leading to the legislature forgoing its own ostensibly constitutional map to push through a map the governor prioritized.¹⁷⁷ Civil rights organizations quickly sued, alleging that the map diminished Black voter power in northern Florida and the 5th Congressional District—which has a significant Black population¹⁷⁸—and intentionally favored the Republican Party to the detriment of Democrats;¹⁷⁹ as of May 2023, litigation is ongoing, and the maps were used during the 2022 midterms.¹⁸⁰ In *Common Cause v. Raffensperger*, plaintiffs challenged Georgia's new congressional map, alleging that the Republican-controlled General Assembly used race as the predominant factor in drawing several congressional districts without a compelling reason, in violation of the Equal Protection Clause, or to comply with the VRA.¹⁸¹ The plaintiffs did not seek relief for the 2022

The VRA prohibits states from drawing district maps that have the effect of reducing or diluting minority voting strength.

This includes attempts to "pack" BIPOC voters into one district or "crack" them among several districts, effectively undermining their voting power.

midterms, and the litigation is pending as of May 2023.¹¹²

In addition, the 2021 legislative redistricting process was also fervently litigated, with state legislatures attempting numerous strategies to dilute the BIPOC vote. During the 2021 redistricting cycle, 55 lawsuits challenged state legislative maps.¹¹³ These suits included challenges to Georgia, Louisiana and Mississippi's legislative maps. As with congressional maps, state legislative maps are key to determining how BIPOC communities are represented in state policy and resource allocation. Local redistricting, which occurs at the city and county level, has also been the subject of litigation. For example, civil rights groups and local activists, including the SPLC, challenged the city of Jacksonville, Florida's city council map¹¹⁴ and that of Cobb County, Georgia's school board as racially gerrymandered.¹¹⁵ The city of Miami is also involved in similar litigation over its city commission maps as of May 2023.¹¹⁶

Use of Suppression Tactics to Maintain Power

The manipulation of the redistricting process has been bolstered by specific suppression tactics at the state and local levels. For example, at-large election schemes, wherein all voters cast their ballots for all candidates, have been a historic tool for the retention of power. At-large voting, as opposed to single-member voting districts, has been viewed as racially discriminatory because it does not allow BIPOC communities to elect a candidate of their choice in jurisdictions in which they are not the majority.¹¹⁷ In 2022, the U.S. Supreme Court reinstated a federal trial court's decision barring officials in Georgia from using at-large elections for the state's Public Service Commission elections.¹¹⁸ Plaintiffs in the case argued that the scheme diluted Black voting power in violation of the VRA; as a result of the ongoing litigation, the election was postponed.¹¹⁹ Perplexingly, however, a new effort has emerged wherein unlikely interests have supported at-large voting districts to achieve their aims. In 2022, Alachua County voters in Florida considered a Republican-backed ballot measure that would return the county to single-member districts for their county commissioner elections. During the ongoing debate, mailers were sent out to county voters containing quotes and pictures from two Black commissioners and the local NAACP professing their support for the measure. These leaders, however, refused any affiliation with the mailers, saying that because the Black community is dispersed within the county,

At-large voting, as opposed to single-member voting districts, has been viewed as racially discriminatory because it does not allow BIPOC communities to elect a candidate of their choice in jurisdictions in which they are not the majority.

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lawsuits challenged state legislative maps during the 2021 redistricting cycle.

single-member districts, rather than at-large voting, would *harm* their ability to elect candidates of their choice.¹²⁰ This example may be an indication of innovative strategies to come to suppress BIPOC political participation as the country becomes more diverse.

Prison-based gerrymandering has also emerged as another path to retaining power for state legislatures. In prison-based gerrymandering, states and local governments count incarcerated people as residents of the area in which they are incarcerated, rather than their home communities, for redistricting purposes.¹²¹ This process inappropriately bolsters the political power of smaller jurisdictions that profit from the prison industrial system, while draining political power from communities that most need it. And since prisons are mostly located in rural, white communities far away from where incarcerated people live, this is an obvious attempt to suppress the BIPOC vote.¹²² Thus, even as people with criminal convictions, who are largely people of color, are denied the right to vote, their bodies are being used to shore up political influence for communities that do not represent their interests. And because the South has the highest prison incarceration rates in the country¹²³—with this population largely comprising Black and Latino individuals¹²⁴—prison-based gerrymandering poses a unique harm in this region. As of 2021, 12 states have passed reforms to count incarcerated people in their home jurisdictions—no Deep South state is included on this list.¹²⁵ Interestingly, although a Mississippi attorney general opinion directed counties not to engage in prison-based gerrymandering, it was unclear how many counties followed this guidance;¹²⁶ data shows

“Nobody got to look at the maps before the committee meeting, not even the Black legislators who should have been part of the process. The meeting was in the morning, and we didn’t see the maps until the morning of, so there was no chance for public input.”

Khadidah Stone
Chief Field and Campaign Strategist,
Alabama Forward

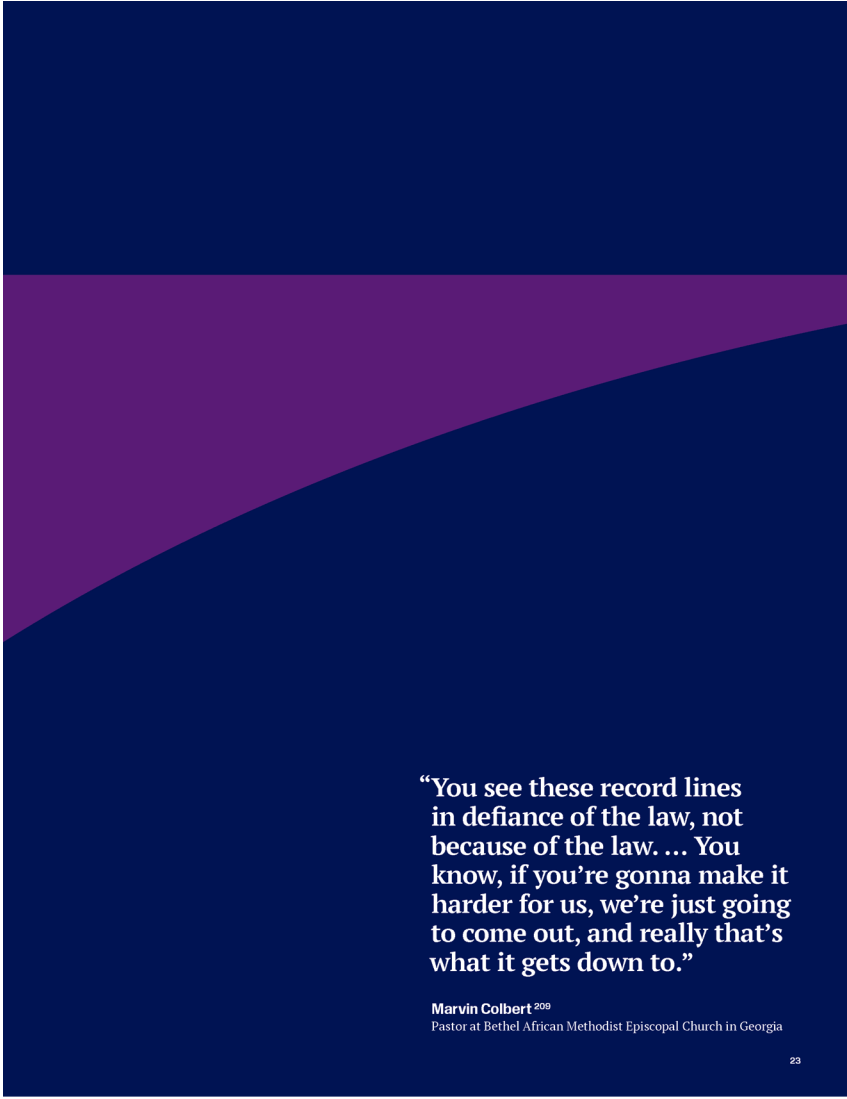
that Mississippi has engaged in prison-based gerrymandering as recently as 2021.¹⁹⁷

Lastly, jurisdictions have attempted to maintain control over redistricting outcomes by suppressing community input—a critical part of the redistricting process. Public hearings have been viewed as an important way for government officials to receive community feedback to inform the drawing of district lines. States often conduct listening tours across the jurisdiction that are designed to engage with and hear from impacted communities. During the 2021 redistricting cycle, however, states only put forth a performative effort to receive community input. For one, even though the redistricting process could not begin before states received the 2020 census data, some states proceeded with public hearings before this date in a blatant effort to ignore meaningful community input informed by the new data. Although data was not released in a user-friendly format until September 2021,¹⁹⁸ Georgia began holding meetings in June 2021,¹⁹⁹ while Mississippi²⁰⁰ and Alabama²⁰¹ hearings were scheduled in August 2021 and during the first two weeks of September, respectively.

Further, the timing of these hearings, which failed to provide for a variety of attendance options, posed potential barriers to community input on neighborhood lines and feedback on proposed maps. For example, most of Alabama’s 26 in-person hearings took place during working business hours.²⁰² By contrast, all of the hearings in Georgia²⁰³ and Mississippi²⁰⁴ took place in the evening, all but one did in Louisiana.²⁰⁵ According to Khadidah Stone, chief field and campaign strategist at Alabama Forward, the fact that Alabama had several morning meetings made it difficult for community members to attend. Once proposed maps were drawn, community members also did not have a meaningful chance to review them. According to Stone, “Nobody got to look at the maps before the morning of the committee meeting, not even the Black legislators who should have been part of the process. The meeting was in the morning, and we didn’t see the maps until the morning of, so there was no chance for public input.” And yet another area of concern was the limited number of public hearings conducted. In larger geographical states, the need for more hearings across the state is crucial for meaningful community input. Yet New Jersey, a state with an area of less than 9,000 square miles, had around the same number of hearings²⁰⁶ as Georgia, Louisiana and Mississippi—states that are considerably larger.²⁰⁷ @

Policy Recommendations

The Path Forward for Protecting and Increasing the Political Participation and Representation of Black People and Other People of Color in the Deep South for the Next Decade—and Beyond



**“You see these record lines
in defiance of the law, not
because of the law. ... You
know, if you’re gonna make it
harder for us, we’re just going
to come out, and really that’s
what it gets down to.”**

Marvin Colbert²⁰⁹
Pastor at Bethel African Methodist Episcopal Church in Georgia

The preceding scan of the current state of political power and representation for Black people and other people of color in the Deep South presents a sobering picture. Ahead of the 2024 general election, in which so many issues important to the BIPOC community are on the line, like reproductive rights, education and public safety, the time is now to develop dynamic approaches to cut through partisan efforts that manipulate access to the ballot and suppress the BIPOC vote.

To do so, we call for the policy proposals listed below to fortify and strengthen democracy in this country:

1. Congress must pass legislation to restore and strengthen the Voting Rights Act that includes a coverage formula responsive to the current voting rights landscape. In the interim, states should pass state voting rights acts to protect BIPOC voting participation and representation now.

This report highlights the ongoing, targeted assault on BIPOC voting rights that is a direct result of the *Shelby County* decision's elimination of federal preclearance. Over the past decade, communities of color across the South have seen their names improperly purged from voter rolls, been subject to suppressive photo ID laws, and tried to navigate confusing and ever-changing voting requirements intended to hinder their access to the ballot.

In the 10 years since *Shelby County*, there have been several attempts to update the VRA's coverage formula. The most recent attempt, the John Lewis Voting Rights Advancement Act, stalled in the Senate in 2022.²⁵⁹ Additionally, the For the People Act, which was introduced in 2021 and would ensure easier access to the ballot box, require independent redistricting commissions for congressional redistricting, and help ensure protections for diverse communities from the onslaught of voter suppression tactics, also failed to pass.²⁶⁰ To ensure that future generations will not have to face the

same barriers experienced by BIPOC communities in the Deep South over the past decade, Congress should act swiftly to reintroduce and pass a strengthened Voting Rights Act that is responsive to the current voting landscape. Critically, this legislation must include a revised coverage formula that is in alignment with present-day circumstances.

To supplement this federal effort, states can also take action to protect BIPOC voting power in their individual states. States across the nation,²⁶¹ including Virginia, which was formerly subject to Section 5 preclearance,²⁶² have passed state voting rights acts aimed to protect the fundamental right to vote for their residents in the face of ever-present barriers.

2. To respond to the growing demands placed on election administrators and increasing population growth in the South, the federal government should significantly increase election administration funding for state and local jurisdictions to allow them to both modernize their election infrastructure and carry out effective elections. This funding should be transparent, sustainable and predictable. Spending guidance must accompany the funding to ensure equitable distribution based on population and need.

Chronically underfunded and under attack, election administration in the South is in dire need of resources and support. In 2023, Senate Democrats reintroduced the Sustaining Our Democracy Act, which designates \$20 billion in federal funding over the next decade to strengthen election administration, including expanding polling places, making upgrades to voter registration systems, and increasing access to voting for underrepresented communities of racial and language minority groups.²⁶³ And, as mentioned, DHS has made provision for election security funds within its grant funding process. While significant, this amount is only a start to filling in the estimated \$55 billion needed to modernize the country's election infrastructure over the next decade. Accordingly, we call on the federal government to increase its spending on election administration and urge states to eliminate bans on critically needed third-party funding, money that is essential to offset rising election costs and incorporate accountability and transparency into the funding process. Spending guidance should also accompany said funding to ensure that it is responsive to growing population numbers and resource needs.

3. The federal government should increase funding for Department of Justice investigations of discriminatory voting practices and enforcement of voting rights laws.

Without the “shield” of federal preclearance, DOJ has been forced to rely on Section 2 of the VRA to challenge problematic voting practices. This restriction places added pressure on the department given the volume and unceasing introduction of voter suppression bills in the Deep South. Indeed, DOJ has affirmed this position, noting in court filings that the “limited federal resources available for Voting Rights Act enforcement reinforce the need for a private cause of action.”²⁴⁹ Congress should increase funding for DOJ investigations to ensure it is effectively able to carry out its enforcement responsibilities under Section 2 of the VRA.

4. States should restore the right to vote for people with criminal convictions without restrictions.

After decades of advocacy, Florida voters restored the right to vote to people with certain criminal convictions. This was a coordinated effort that shows advocacy does work and can have an impact that affects millions. The addition of the payment of outstanding fines, fees and other costs as a restoration condition, however, foreclosed this avenue for a number of largely BIPOC residents who would have otherwise had this precious right restored. The criminal legal system has no place in our democratic process and should not be used to disenfranchise people of color who are disproportionately subjected to it.

Accordingly, we support the advocacy community in urging states to restore the right to vote for as many people as possible with criminal convictions without any further monetary restrictions, like payment of fines and fees. We also urge states to simplify the process to make it easier for those with a criminal conviction to restore their right to vote quickly.

5. States should move toward eliminating partisanship in the redistricting process and meaningfully include community input in the process.

Voters should select their representatives and not the other way around. The partisanship of the redistricting process, however, is antithetical to voters doing so. State and local governments should move toward eliminating

partisanship in how they draw their district lines. One way to do so is through the establishment of independent commissions, such as bipartisan independent redistricting commissions, which include positions for the local community to serve and can involve screening applicants for conflict issues. Jurisdictions should also prioritize community input and feedback during the redistricting process, holding public hearings in a manner that maximizes community input and allows community members to meaningfully weigh in on how districts should be drawn. Further, state and local jurisdictions should eliminate the use of prison-based gerrymandering and consider what voting mechanisms can be used to allow BIPOC communities to have a true choice in who represents them.

6. Federal agencies should move swiftly and effectively to meet the goals of the Executive Order on Promoting Access to Voting (EO 14019), including integrating voter registration opportunities for their constituents they serve wherever possible.

In a healthy, inclusive democracy, the responsibility for ensuring all eligible people are registered should fall on the government, not on the individual. In March 2021, President Biden issued the Executive Order on Promoting Access to Voting (EO 14019), which calls on federal agencies to do what they can to connect the eligible people they serve with opportunities to register to vote and information and resources on voting.²⁵⁰ This executive order is a tremendous step in the right direction for increasing political participation and engagement. However, any new policy is only as good as its implementation, and there is still a great deal for the agencies to do to meet the goals of this important proclamation. Agencies that serve significant numbers of people in the Deep South, including many BIPOC communities, where access to voting is often the most difficult, must particularly step up. This includes the Department of Health and Human Services, which could reach millions by integrating voter registration into HealthCare.gov; the Department of Education, which could share information about registering and voting with millions more during the FAFSA process; and several others, as detailed in *Strengthening Democracy: A Progress Report on Federal Agency Action to Promote Access to Voting*, a 2025 report from the Leadership Conference on Civil and Human Rights, the SPLC Action Fund and 50 other organizations.²⁵¹ ●

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Written Testimony of the Southern Poverty Law Center

Submitted to the U.S. Senate Committee on the Judiciary

In connection with its March 12, 2024 hearing entitled
“The Right Side of History: Protecting Voting Rights in America”

Hearing March 12, 2024

Organizational Testimony Submitted March 19, 2024



On behalf of the Southern Poverty Law Center (SPLC) Action Fund, we write to provide our insights regarding the issues addressed during the Senate Committee on the Judiciary’s “The Right Side of History: Protecting Voting Rights in America” hearing. We appreciate the opportunity to share our expertise documenting persistent race discrimination in voting in the five states in which the SPLC operates – Alabama, Florida, Georgia, Louisiana, and Mississippi – and on the urgent need for swift Congressional action restoring, strengthening, and modernizing the Voting Rights Act. We respectfully request this statement be included as part of the official hearing record.

The Southern Poverty Law Center: 50 Years of Protecting Civil Rights in the South

The Southern Poverty Law Center (SPLC) has for fifty years worked to expand and safeguard civil rights protections, primarily through the courts. Since its founding, SPLC has won numerous landmark legal victories on behalf of the exploited, the powerless and the forgotten. Our lawsuits have toppled institutional racism and have made significant progress in stamping out remnants of Jim Crow segregation; destroyed some of the nation’s most violent white supremacist groups; and protected the civil rights of children, women, people with disabilities, immigrants and migrant workers, the LGBTQ community, incarcerated people, and many others who faced discrimination, abuse or exploitation. In 2019—after six years of witnessing the unrelenting attack on the right to vote across our states—we added a new legal practice group focused on voting rights. Since that time, we have brought cases defending and expanding the voting rights of residents of the Deep South. Because state legislatures and executives in our states often target people of color, we are particularly focused on protecting the rights of these communities.

Our expertise stems from our deep roots in a region that has always been at the forefront of suppressing and oppressing people of color, and our approach to voting rights advocacy and litigation is informed by our longstanding relationships with communities of color that have for centuries been on the frontlines of resisting that oppression in Alabama, Florida, Georgia, Louisiana, and Mississippi.

The Decade Since *Shelby County* Has Presented Unprecedented Threats to Voters of Color and to Democracy

Just over a decade ago, a U.S. Supreme Court decision dramatically altered the landscape of voting rights in the Deep South. In *Shelby County v. Holder*, five justices struck down a key provision of the Voting Rights Act (VRA) of 1965—the preclearance coverage formula in Section 4(b)—eliminating a critical accountability tool that had protected the voting rights of Black, Indigenous and other People of Color (BIPOC) in states with a history of discriminatory voting practices for almost half a century.¹ In her dissent, the late Justice Ginsburg likened the decision nullifying the preclearance regime, which had been extremely effective at preventing

¹ *Shelby County v. Holder*, 570 U.S. 529 (2013).



discriminatory changes to voting laws,² to “throwing away your umbrella in a rainstorm because you are not getting wet.”³

Many of those states previously covered by preclearance—and many of the discriminatory, restrictive voting laws that have passed since its demise—are in the Deep South. Because of their intractable and pervasive history of racial discrimination in voting, Alabama, Georgia, Louisiana, and Mississippi were each covered by the preclearance requirement, and multiple counties in Florida were covered, as well.⁴ From emancipation and the granting of the vote to formerly enslaved people through the passage of the VRA in 1965, these states employed countless voter suppression tactics, including violence, aimed to limit Black political participation and representation. As we outline in our report *A Decade-Long Erosion*, in *Shelby County’s* wake, states across the Deep South passed voter suppression bills with reckless abandonment of democratic principles guaranteed by the U.S. Constitution, erecting a pervasive and damning wall of voting barriers for BIPOC voters.⁵

The *Shelby County* decision is not the only one that has undermined voting rights over the last several years. In 2018, in *Husted v. A. Philip Randolph Institute*, the Supreme Court ruled that states are permitted to target eligible voters for removal simply because they have not voted frequently enough in the eyes of state officials, willfully ignoring the plain terms of the National Voter Registration Act prohibiting the removal of voters for “failure to vote.”⁶ A year later, in *Rucho v. Common Cause*, the Supreme Court abdicated all responsibility for adjudicating violations of voting rights related to partisan gerrymandering, claiming that such questions are not the purview of the federal courts and greenlighting redistricting plans that crack and pack voters for partisan advantage.⁷ In 2021, the Supreme Court decided *Brnovich v. Democratic National Committee*, dealing another blow to the protections for voters of color in the VRA by making it harder for these voters to challenge discriminatory voting laws in court.⁸ *Brnovich* dealt with Section 2 of the VRA, which took on extra importance in the wake of *Shelby County v. Holder*; without the prophylactic protections of Section 5, voters of color have to turn to the

² Between 1965 and 2006, the U.S. Department of Justice blocked almost 1,200 proposed voting law changes in covered jurisdictions. U.S. Department of Justice, *Attorney General Merrick B. Garland Statement Regarding the 58th Anniversary of the Voting Rights Act*, August 4, 2023. <https://www.justice.gov/opa/pr/attorney-general-merrick-b-garland-statement-regarding-58th-anniversary-voting-rights-act#:~:text=Between%201965%20and%202006%2C%20the,effectively%20lost%20this%20powerful%20tool>.

³ *Shelby County v. Holder*, 570 U.S. 529, 590 (2013) (Ginsburg, J. dissenting).

⁴ U.S. Department of Justice, *About Section 5 of the Voting Rights Act*, Updated November 17, 2023. <https://www.justice.gov/crt/about-section-5-voting-rights-act#:~:text=Under%20Section%205%2C%20any%20change,makes%20a%20submission%20to%20the>

⁵ *A Decade-Long Erosion: The Impact of the Shelby County Decision on the Political Participation and Representation of Black People and Other People of Color in the Deep South*, Southern Poverty Law Center, June 2023. <https://www.splcenter.org/shelby-county-decision-report>

⁶ *Husted v. A. Philip Randolph Institute*, 584 U.S. 756 (2018).

⁷ *Rucho v. Common Cause*, 139 S. Ct. 2484 (2019).

⁸ *Brnovich v. Democratic National Committee*, 141 S. Ct. 2321 (2021).



courts to vindicate their voting rights *after* discriminatory laws, practices, and procedures were enacted – and often after irreparable harm has taken place. Section 2 provides protections for these harmed voters to do so, but *Brnovich* weakened those protections and has left voters of color even more vulnerable to disenfranchisement in the years since.

And it is not just the Supreme Court that is abdicating its responsibility to protect the fundamental right to vote; Americans who have had their rights violated are finding it harder and harder to find relief in the federal courts at every level. Plaintiffs and voting rights advocates are winning fewer cases in the district courts, and those they do win are facing hostile judges in the appellate courts. As described further below, the Circuit Courts representing the Deep South—the Fifth and the Eleventh—have both overturned a number of district court rulings finding racial discrimination in voting, leaving voters of color in these states with few avenues to vindicate their rights.

On top of the assault on their voting rights by state legislatures and the lack of relief in the federal courts, voters have faced additional unprecedented threats to their ability to exercise their fundamental rights. 2020 brought a global pandemic and the urgent need to adapt voting practices and procedures to allow voters to safely cast a ballot that counts – with some states rising to the challenge and others, including some in the Deep South digging in their heels on inaccessible policies. After record turnout in that election, including by voters of color, those who oppose a multiracial, inclusive democracy staged an insurrection at the U.S. Capitol attempting to overturn the election results. The lie that fueled that attempted insurrection has proven quite persistent in the four years since and led to severe and escalating threats to election workers and intimidation of voters of color. And all the while, our election infrastructure—the actual buildings, machines, and systems necessary to run elections—has been neglected and is showing its age, leaving our democracy vulnerable.

While this testimony will focus primarily on the discriminatory laws and other undemocratic machinations of state governors and legislators across the Deep South enabled by the *Shelby County* decision, each of these conditions compound and contribute to a state of significant precarity for democracy. At the root of all of them, however, is the fundamental right to vote. While this precious right has always been contested in our country, it was significantly strengthened and enjoyed relative calm for nearly a half-century, between the passage of the Voting Rights Act and the devastating *Shelby County v. Holder* decision. To stabilize our democracy and ensure our nation lives up to its most sacred ideals and values, Congress must act urgently to protect the fundamental right to vote for all Americans.

The Current Conditions of Voting Discrimination in the Deep South Demand Congress Strengthen, Update, and Modernize the VRA of 1965

Congress originally passed the Voting Rights Act in 1965 to protect voters of color from rampant and pervasive racial discrimination in voting, especially in several states with a demonstrable record of such discrimination. While racial discrimination in voting in 2024 does not look exactly



as it looked in 1965, there is no doubt it remains present and, in the Deep South, rampant and pervasive.

In the ten years following *Shelby County*, states have passed around 100 restrictive voting laws,⁹ changes to the way we vote that have fallen hardest on voters of color, voters with disabilities, low-income voters, young and elderly voters, and other marginalized communities.¹⁰ Several of those restrictive laws have passed in Alabama, Florida, Georgia, Louisiana, and Mississippi. Over the last decade, each of these states has passed at least one law making it harder for people of color to vote—in some cases in the form of omnibus legislation that takes aim at several voting mechanisms enjoyed by voters of color—and each has considered several additional measures that have yet to become law but may well in the years to come.¹¹ Each state has also faced litigation alleging discrimination in their legislative maps following the 2020 census;¹² while some of that litigation is ongoing, judges or justices have found violations of state or federal law prohibiting racial discrimination in map drawing in four of these five states.¹³

Unsurprisingly, just over a decade after the *Shelby County* decision, the gap in voter turnout between white voters and voters of color has grown.¹⁴ But it has not grown uniformly; it has grown most significantly—indeed, nearly twice as quickly—in states that were previously subject to preclearance. As it turns out, things have *not* changed in the South. These states were originally covered due to their demonstrable histories of racial discrimination in voting and the wide gaps in registration rates between white and Black voters;¹⁵ today, freed from the barrier presented to racially discriminatory voting laws by preclearance, states in the Deep South have once again

⁹ Brennan Center for Justice, *States Have Added Nearly 100 Restrictive Laws Since SCOTUS Guttled the Voting Rights Act 10 Years Ago*, June 23, 2023. <https://www.brennancenter.org/our-work/analysis-opinion/states-have-added-nearly-100-restrictive-laws-scotus-guttled-voting-rights>

¹⁰ Brennan Center for Justice, *The Impact of Voter Suppression on Communities of Color*, January 10, 2022. <https://www.brennancenter.org/our-work/research-reports/impact-voter-suppression-communities-color>

¹¹ *Supra* note 5, Southern Poverty Law Center. See also *supra* note 9, Brennan Center.

¹² *Cases*, All About Redistricting, 2020 Cycle. <https://redistricting.ils.edu/cases/?cycles%5B%5D=2020&states%5B%5D=Alabama&states%5B%5D=Florida&states%5B%5D=Georgia&states%5B%5D=Louisiana&states%5B%5D=Mississippi&sortby=-updated&page=1>

¹³ See *Allen v. Milligan*, challenging Alabama's congressional maps and *Stone v. Allen*, challenging Alabama's state legislative maps; *Pendergrass v. Raffensperger*, challenging Georgia's congressional maps and *Alpha Phi Alpha v. Raffensperger*, challenging Georgia's state legislative maps; *Common Cause Florida v. Byrd*, challenging Florida's congressional maps in federal court and *Black Voters Matter Capacity Building Institute v. Byrd*, challenging Florida's congressional maps in state court; *Robinson v. Landry*, challenging Louisiana's congressional maps and *Nairne v. Landry*, challenging Louisiana's state legislative maps. Trial recently concluded in a case challenging Mississippi's state legislative maps (*Mississippi State Conf. of the NAACP v. State Bd. of Election Comm'rs.*) after the 2021 redistricting cycle. While no ruling has been issued yet, courts did find that Mississippi's State Senate map from the last cycle diluted the voting strength of Black Mississippians. See *Thomas v. Bryant*, 938 F.3d 134, 166 (5th Cir. 2019), vacated as moot, *Thomas v. Reeves*, 961 F.3d 800 (5th Cir. 2020).

¹⁴ Kevin Morris & Coryn Grange, *Growing Racial Disparities in Voter Turnout, 2008-2022*, Brennan Center for Justice, March 2, 2024. <https://www.brennancenter.org/our-work/research-reports/growing-racial-disparities-voter-turnout-2008-2022>

¹⁵ *Supra* note 4, U.S. DOJ.



pursued laws that reduce the political participation and power of communities of color. The actions of these states post *Shelby County* underscore the need to restore the VRA.

Congress must act urgently to protect the fundamental voting rights of people of color in the Deep South and across the country. When the Supreme Court ripped the heart out of the VRA, it reminded us that Congress has the ability to draft a new coverage formula that responds to current conditions of racial discrimination in voting. Congress not only has that ability, it has that responsibility – an urgent, moral responsibility. After more than a decade of inaction, Congress must move swiftly to restore, strengthen, and modernize the VRA of 1965. At the end of this testimony, we offer recommendations for how Congress can most effectively do that.

Changes to Voting Policies and Procedures in the Deep South Post-*Shelby County* Have A Discriminatory Impact on Voters of Color

States in the Deep South have enacted myriad new laws, policies, and procedures in the wake of *Shelby County* that make it harder for voters—especially voters of color—to exercise their fundamental rights. Some of these rules existed before 2013, but many of the most restrictive, suppressive laws that didn’t pass preclearance muster previously have been enacted with alacrity since the coverage formula was invalidated.

As just one measure of the difficulty of voting, a 2022 study estimating the cost of voting in all 50 states found that each of the five Deep South states ranks in the bottom 25, meaning it is relatively harder to vote.¹⁶ Mississippi ranks 50th—it is harder to vote in the state of Mississippi than in any other state in the nation—and Alabama ranks 45th.¹⁷ Many of the policies that cause the Deep South states to be low ranking are known to have a discriminatory effect; i.e., there is evidence showing the disparate impact of these policies on populations of color.¹⁸ This section details several of those policies, with notes about when, where, and how they were passed, and their negative impact on voters of color.

A. Strict Voter ID Requirements Disenfranchise Voters of Color

Within 24 hours of the Supreme Court’s decision in *Shelby County v. Holder*, Alabama implemented one of the most restrictive voter ID laws in the nation; the law has no option for voting without ID unless two election officials identify the voter and sign sworn affidavits attesting to the voter’s eligibility.¹⁹ The Alabama Legislature had approved the measure in 2011, but chose not to implement it, understanding it was unlikely to receive preclearance given that

¹⁶ University Press of Kansas, *The Cost of Voting in the American States*, as of November 8, 2022.

<https://costofvotingindex.com/>

¹⁷ *Id.*

¹⁸ *Supra* note 10, Brennan Center.

¹⁹ The law was operable as of the June 3, 2014 primary elections. Photo Voter ID, Alabama Secretary of State.

<https://www.sos.alabama.gov/alabama-votes/voter/voter-id>



similar laws across the country had been blocked because they harmed voters of color.²⁰ Freed from the obligation to check the law for discriminatory impact, Alabama swiftly implemented its voter ID law in the wake of *Shelby County*, despite clear evidence demonstrating that Black and Latinx voters are less likely to possess acceptable documentation in Alabama.²¹

Moreover, soon after the photo ID law went into effect, the state announced plans to close dozens of DMV offices, with the closures concentrated in the counties with the highest percentage of Black residents.²² At the time of the DMV closures in 2015, 26.3 percent of the total Alabama population was Black, with Black residents comprising more than 50 percent of the population in eleven counties. Driver's license offices were closed in eight of these eleven counties, leaving only three majority-Black counties with a license-issuing office. In addition, under Alabama's plan, license-issuing offices closed in all six counties in which Black residents comprised over 70 percent of the population. Conversely, forty license-issuing offices remained open in the fifty-five Alabama counties in which white residents comprised more than 50 percent of the population.²³ The U.S. Department of Transportation launched an investigation into the DMV closures and the limited reopening plan and found that the closures and service reductions were racially discriminatory and had "a disparate and adverse impact on the basis of race."²⁴ Eventually, after significant public outcry, Alabama agreed to reopen the offices and increase hours in several majority-black counties.²⁵ But the discriminatory intent and impact of these closures—less than a decade ago—remains clear.

Mississippi also moved swiftly to implement a strict photo ID law in the wake of *Shelby County*. In 2012, the legislature passed a law mandating strict new requirements for voter identification, namely requiring photo ID.²⁶ However, before the law could go into effect, Mississippi had to submit the law for preclearance, to ensure it did not have a discriminatory impact. Mississippi's preclearance application was under review when the Supreme Court announced its *Shelby County*

²⁰ Kim Chandler, *State Has Yet to Seek Preclearance of Photo Voter ID Law Approved in 2011*, AL.com, June 12, 2013. https://www.al.com/wire/2013/06/photo_voter_id.html

²¹ Maggie Astor, *Seven Ways Alabama Has Made It Harder to Vote*, The New York Times, June 23, 2018. <https://www.nytimes.com/2018/06/23/us/politics/voting-rights-alabama.html>

²² *Id.* See also, Campbell Robertson, *For Alabama's Poor, the Budget Cuts Trickle Down, Limiting Access to Driver's Licenses*, The New York Times, October 9, 2015. <https://www.nytimes.com/2015/10/10/us/alabama-budget-cuts-raise-concern-over-voting-rights.html>

²³ Adam Gitlin & Christopher Famighetti, *Closing Driver's License Offices in Alabama*, Brennan Center for Justice. <https://www.brennancenter.org/our-work/analysis-opinion/closing-drivers-license-offices-alabama>

²⁴ U.S. Department of Transportation, *U.S. Department of Transportation Takes Action to Ensure Equitable Driver's License Office Access for Alabama Residents*, December 28, 2016. <https://www.transportation.gov/briefing-room/us-department-transportation-takes-action-ensure-equitable-driver-license-office>

²⁵ Maggie Astor, *supra* note 21.

²⁶ Mississippi House Bill 921 (2012). <https://billstatus.ls.state.ms.us/documents/2012/html/HB/0900-0999/HB0921SG.htm>



decision, releasing Mississippi from any preclearance obligations.²⁷ Within hours of the decision, lawmakers announced that they would proceed with implementing the restrictive new photo ID law.²⁸

Strict photo ID requirements such as Alabama's and Mississippi's effectively disenfranchise many Black and low-income voters. Residents of low-income, rural, predominantly Black areas of Mississippi frequently lack government-issued photo ID.²⁹ A 2021 study analyzing a dataset across several states found racial disparities in access to photo ID accepted for voting that persist even after accounting for covariates like education and income.³⁰ Additionally, research shows that these racial disparities in access to photo ID do, in fact, decrease actual turnout for voters of color.³¹ Indeed, the Justice Department objected to a pre-*Shelby County* 2012 Texas photo ID law on the ground that it would disproportionately affect low-income voters and voters of color,³² and a federal court blocked the law on the ground that the legislation would impose strict and unforgiving burdens on voters of color.³³

B. Polling Places Have Been Closed in Counties with High Populations of Color

In the six years following *Shelby County*, Alabama closed at least 72 polling locations across 23 counties, many without public notice and most in early 2014, immediately after *Shelby County*. At least one polling location closed in thirty-four percent of Alabama counties, including many

²⁷ Maureen Cosgrove, *Mississippi Voter ID Law Delayed Pending Federal Review*, Jurist, October 3, 2012.

<https://www.jurist.org/news/2012/10/mississippi-voter-id-law-delayed-pending-federal-review/>

²⁸ H.R. Rep. No. 116-317, at 38 (2019), <https://www.congress.gov/116/crpt/hrpt317/CRPT-116hrpt317.pdf>.

²⁹ *Voter ID Proposal on Mississippi Ballot Nov. 8*, Deseret News, October 27, 2011.

<https://www.deseret.com/2011/10/27/20226382/voter-id-proposal-on-mississippi-ballot-nov-8/#in-this-oct-19-2011-photo-patricia-ball-a-50-year-old-resident-of-kosciusko-miss-said-she-opposes-requiring-people-to-show-a-driver-s-license-or-other-identification-at-the-polls-mississippians-will-decide-nov-8-whether-voters-should-be-required-to-show-government-issued-photo-identification-before-casting-ballots>

³⁰ Hearing on "Voting in America: The Potential for Voter ID Laws, Proof-of Citizenship Laws, and Lack of Multi-Lingual Support to Interfere with Free and Fair Access to the Ballot," Committee on House Administration, 117th Congress, May 24, 2021, written testimony Dr. Matt Barreto.

<https://docs.house.gov/meetings/HA/HA08/20210524/112670/HHRG-117-HA08-Wstate-BarretoM-20210524.pdf>

³¹ Hearing on "Voting in America: The Potential for Voter ID Laws, Proof-of Citizenship Laws, and Lack of Multi-Lingual Support to Interfere with Free and Fair Access to the Ballot," Committee on House Administration, 117th Congress, May 24, 2021, written testimony of Nazita Lajevardi. <https://www.congress.gov/117/chrg/CHRG-117hrg45612/CHRG-117hrg45612.pdf>

³² U.S. Department of Justice, Civil Rights Division, *Objection to state of Texas voter registration and photographic identification procedures*, March 12, 2012.

https://www.justice.gov/sites/default/files/crt/legacy/2014/05/30/1_120312.pdf

³³ Sari Horwitz, *Texas Voter-ID Law Is Blocked*, the Washington Post, August 30, 2012.

https://www.washingtonpost.com/world/national-security/texas-voter-id-law-struck-down/2012/08/30/4a07e270-f2ad-11e1-adc6-87dfa8eff430_story.html



counties in the Black Belt.³⁴ The most closures during that period—10 polling places, or 26 percent of the county’s voting sites—happened in Marshall County, which is 13 percent Latino. Mobile County, which is 35 percent Black, also closed 10 locations, or about 10 percent of its voting sites.³⁵

Counties have also drastically reduced polling places across Georgia during the same time period. Ahead of the 2018 midterms, Georgians had 214 fewer places to cast ballots than they did in 2012, with reductions to voting sites in a third of Georgia counties since the *Shelby County* decision.³⁶ Since *Shelby County*, at least eighteen counties have closed more than half of their polling places, and several have closed almost 90 percent.³⁷ Troublingly, there is evidence these closures are targeting counties with large Black populations. Of the 53 counties that had closed polling places before 2018, Black Georgians made up at least 25 percent of the population in 30 of those counties.³⁸ In advance of the 2018 election, the state moved to close polling places in 10 counties with large Black populations,³⁹ including a proposal to close seven of nine polling places in Randolph County. At the time, Black Georgians constituted 32 percent of the population of the state but 61 percent of the population of Randolph County; one of the polling places that the Board sought to close served a population that was 97% Black.⁴⁰ While outcry from local and national advocates defeated the proposal in Randolph County,⁴¹ closures continued in several other counties.

Shortly after the *Shelby County* decision, counties in Florida began closing or relocating polling places, here again with implications for voters of color. In October 2013, the city of Jacksonville relocated a polling place that had been open since 2006 and overwhelmingly served Black

³⁴ The Leadership Conference Education Fund, *Polling Place Closures and the Right to Vote*, at 38, September 2019. <https://civilrightsdocs.info/pdf/reports/Democracy-Diverted.pdf>. See also Mary Sell, *In Some Counties, Alabama Voters Have Lost a Quarter of their Polling Sites Since 2010*, Birmingham Watch, November 2, 2018. <https://birminghamwatch.org/counties-alabama-voters-lost-quarter-polling-places-since-2010/>

³⁵ *Id.* at 39.

³⁶ Mark Niesse, Maya T. Prabhu, & Jacquelyn Elias, *Voting Precincts Closed Across Georgia Since Election Oversight Lifted*, Atlanta Journal Constitution, August 31, 2018. <https://www.ajc.com/news/state--regional-govt--politics/voting-precincts-closed-across-georgia-since-election-oversight-lifted/bBkHxptlm0Gp9pKu7dfrN/>

³⁷ *Supra* note 34, Leadership Conference, at 31.

³⁸ *Id.*

³⁹ Matt Vasilogambros, *Polling Places Remain a Target Ahead of November Elections*, Stateline, September 4, 2018. <https://stateline.org/2018/09/04/polling-places-remain-a-target-ahead-of-november-elections/>

⁴⁰ Sam Levine, *Officials Defend Plan to Close Almost All Polling Places in Majority Black Georgia County*, the Huffington Post, August 17, 2018. https://www.huffpost.com/entry/randolph-county-polling-places_n_5b77115ce4b0a5b1fcb04fc

⁴¹ Mark Niesse, *Proposal to Close Rural Georgia Precincts Soundly Defeated*, Atlanta Journal Constitution, August 24, 2018. <https://www.ajc.com/news/state--regional-govt--politics/elections-board-votes-down-proposal-close-georgia-voting-precincts/hEbQApsOXBICMHwRgOEqWP/>



residents; in the 2012 election, 92% of the ballots cast at the site were by Black voters.⁴² Despite the city’s department of public works determining the site’s renewal proposal was the most economical and feasible of the options, the city opted to place the polling elsewhere, at a location without convenient public transportation access.⁴³ In February 2014, the Manatee County Commission approved the Supervisor of Election’s plan to reduce polling places in the county by almost a third (down to 69 from 99);⁴⁴ Manatee County is about 9 percent Black and 17 percent Latinx.⁴⁵ Further, in Pinellas County, which is 11 percent Black and 11 percent Latinx, the Supervisor of Elections refused requests by advocates in the wake of *Shelby County* to provide early voting sites within Black communities in South St. Petersburg and St. Petersburg.⁴⁶

Florida lawmakers have also taken aim at polling places serving young voters since *Shelby County*. In 2014, the Florida Secretary of State issued a directive to county election supervisors that prevented early voting sites on college campuses.⁴⁷ The directive—clearly aimed at preventing an increasingly diverse young generation of Floridians from voting—was challenged in court and eventually nullified.⁴⁸ In a 2018 ruling, a federal judge ordered Florida to provide early voting sites on several campuses, and in that November election, about 60,000 votes were cast on 11 campuses with early voting sites.⁴⁹ In the 2019 legislative session, state lawmakers passed SB 7066, which, among other provisions, took clear aim at these early voting sites by requiring campuses to “provide sufficient non-permitted parking to accommodate the anticipated number of voters” – an impractical requirement that would have shut down polling sites on many campuses.⁵⁰

⁴² Deshayla Strachan, *Black Vote May Be Threatened in Jacksonville*, Courthouse News Service, October 3, 2013, <https://www.courthousenews.com/black-vote-may-be-threatened-in-jacksonville/>

⁴³ *Id.*

⁴⁴ Sara Kennedy, *Manatee County Commission Oks Cut in Number of Voting Locations*, Bradenton Herald, November 12, 2014, <https://www.bradenton.com/news/politics-government/election/article34599378.html>

⁴⁵ United States Census Bureau, *QuickFacts: Manatee County, Florida*, <https://www.census.gov/quickfacts/fact/table/manateecountyflorida/PST045223>

⁴⁶ Sean Kinane, *Pastors Call for Early Voting Site in Black Neighborhood; Pinellas Says No*, WMNF, September 24, 2016, <https://www.wmnf.org/pastors-call-early-voting-site-black-neighborhood-pinellas-says-no/>

⁴⁷ Florida Directive RE: DE 14-01 Early Voting – Facilities, Locations – § 101.657, Florida Statutes, January 17, 2014, <https://www.democracydocket.com/wp-content/uploads/2020/07/2014-SQS-directive.pdf>

⁴⁸ Steve Bousquet, *Federal Judge Calls Florida Ban on Early Voting at College Campuses ‘Discrimination’*, The Miami Herald, July 24, 2018, <https://www.miamiherald.com/latest-news/article215441725.html>

⁴⁹ *Are Republicans, DeSantis Making Campus Early Voting in Florida Impossible?* Tampa Bay Times, June 19, 2019, <https://www.tampabay.com/florida-politics/buzz/2019/06/19/are-republicans-desantis-making-campus-early-voting-in-florida-impossible/>

⁵⁰ Florida Senate Bill 7066 (2019) (“S.B. 7066”), <https://www.flsenate.gov/Session/Bill/2019/7066/BillText/cr/PDF>. After S.B. 7066 passed, plaintiffs filed a supplemental complaint addressing the bill, and in 2020, the case was settled and the Secretary of State issued a new directive, rescinding the 2014 directive and allowing early voting sites on college campuses, regardless of the number of parking spaces. See Florida Directive 2020-01—Early Voting Sites on College and University Campuses and Fla. Stat. 101.657(1)(a), April 2, 2020, <https://andrewgoodman.org/wp->



In Louisiana, by 2019 voters had 126 fewer places to vote than they did before *Shelby County*. Since that time, two-thirds of the state’s parishes have closed polling places. The parish with the highest share of polling place closures—Winn Parish, which closed 24 percent of its polling places between the 2012 and 2018 elections—is 31 percent Black. Similarly, East Baton Rouge Parish, which is 46 percent Black, closed 10 polling places between the 2012 and 2018 elections.”⁵¹ A 2018 analysis found that polling places closures and consolidations in Louisiana “had a racially discriminatory effect, in that as the proportion of African-Americans in a precinct increased, so did their likelihood of being consolidated.”⁵²

During the same period following the *Shelby County* decision, almost 40 percent of Mississippi counties closed at least 96 polling places.”⁵³ In the city of Meridian, which had recently elected its first Black Mayor, the majority-white board of elections moved swiftly after *Shelby County* to close seven polling places.⁵⁴ In 2015, the board further proposed to relocate several polling places located in Black churches in Meridian.⁵⁵ In Madison County in 2020, 2,550 mostly Black and Latinx voters were reassigned from the precinct where they had long voted to a new, smaller precinct, a move that one resident described as moving from a site “with adequate polling stations and adequate parking to an extremely cramped polling place,” a move that would cause “chaos and confusion.”⁵⁶ Of the 2,550 voters moved, 80 percent were voters of color.⁵⁷

C. Restrictions on Vote By Mail Negatively Impact Voters of Color

During an unprecedented and deadly global pandemic, voters in the Deep South and across the country took advantage of the opportunity to vote by mail to ensure their safety and that of their

[content/uploads/2020/04/Directive-2020-01.pdf](#). See also *The Andrew Goodman Foundation Wins Major Student Voting Rights Victory in Florida Ahead of the 2020 Election*, Andrew Goodman Foundation, April 3, 2020. <https://andrewgoodman.org/news-list/the-andrew-goodman-foundation-wins-major-student-voting-rights-victory-in-florida-ahead-of-the-2020-election/>

⁵¹ *Supra* note 34, Leadership Conference, at 34.

⁵² Shawn J. Donahue, *The Re-Precincting of Louisiana after Shelby County: Was Race a Factor?*, Binghamton University (SUNY), 2018.

http://www.shawndonahue13.com/uploads/9/7/4/6/97469540/louisiana_paper_for_southern_donahue.pdf

⁵³ *Supra* note 34, Leadership Conference, at 36.

⁵⁴ Ari Berman, *There Are 868 Fewer Places to Vote in 2016 Because the Supreme Court Guttled the Voting Rights Act*, *The Nation*, November 4, 2016. <https://www.thenation.com/article/archive/there-are-868-fewer-places-to-vote-in-2016-because-the-supreme-court-guttled-the-voting-rights-act/>

⁵⁵ Jeff Byrd, *Reaction Mixed to Precinct Changes*, *The Meridian Star*, May 10, 2015.

https://www.meridianstar.com/news/reaction-mixed-to-precinct-changes/article_8233c35c-f6ca-11e4-aff9-83517e2166dc.html

⁵⁶ Ashton Pittman & William Pittman, *Madison County Moves 2,000 Black, Hispanic Voters to Crowded Precinct with Little Warning*, *Mississippi Free Press*, October 29, 2020. <https://www.mississippifreepress.org/6492/madison-county-moves-2000-black-hispanic-voters-to-crowded-precinct-with-little-warning>

⁵⁷ *Id.*



loved ones.⁵⁸ This new wave of Americans enjoying voting by mail included many voters of color, who, before the 2020 elections, had most often opted to vote in person.⁵⁹ In state legislative sessions in 2021, Deep South lawmakers took direct aim at the voting method, adding new restrictions and requirements that made it harder to vote by mail.

Alabama has taken aim at voting by mail over and over again since the 2020 election. In 2021, the state legislature passed HB538,⁶⁰ which shortens the absentee voting window by reducing the number of days voters have to request an absentee ballot by mail. Previously, the State accepted absentee ballot applications until five days before an election, but now the State only accepts applications received seven days prior to an election. In 2022 and 2023, lawmakers advanced bills that would restrict who can assist voters with their absentee ballot applications and ballots themselves.⁶¹ While those bills did not ultimately pass, Alabama lawmakers are actively working to restrict this option even further.

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.⁶² 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, but 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

⁵⁸ *Majority of Voters Used Nontraditional Methods to Cast Ballots in 2020*, U.S. Census Bureau, April 29, 2021. <https://www.census.gov/library/stories/2021/04/what-methods-did-people-use-to-vote-in-2020-election.html>. See also *Mail-in Voting Became Much More Common in 2020 Primaries as COVID-19 Spread*, Pew Research Center, October 13, 2020. <https://www.pewresearch.org/short-reads/2020/10/13/mail-in-voting-became-much-more-common-in-2020-primaries-as-covid-19-spread/>

⁵⁹ *Id.* See also *Voting and Registration in the Election of 2018*, U.S. Census Bureau, April 2019. <https://www.census.gov/data/tables/time-series/demo/voting-and-registration/p20-583.html>; *Voting and Registration in the Election of 2020*, U.S. Census Bureau, April 2021. <https://www.census.gov/data/tables/time-series/demo/voting-and-registration/p20-585.html>

⁶⁰ Alabama House Bill 538 (2021). https://arc-sos.state.al.us/ucp/L0614123_A11.pdf.

⁶¹ Alabama House Bill 193 (2022). <https://legiscan.com/AL/text/HB193/id/2500784/Alabama-2022-HB193-Introduced.pdf>; Alabama House Bill 209 (2023). <https://legiscan.com/AL/bill/HB209/2023>; Alabama House Bill 193 (2022). <https://legiscan.com/AL/text/HB193/id/2500784/Alabama-2022-HB193-Introduced.pdf>; Alabama House Bill 209 (2023). <https://legiscan.com/AL/text/HB209/id/2757291/Alabama-2023-HB209-Introduced.pdf>

⁶² Alabama Senate Bill 1 (2024). <https://legiscan.com/AL/text/SB1/2024>



Alabama, 20.7 percent of Native Americans and 18.5 percent of Black people reported a disability, compared to 14.4 percent of white people.⁶³

In Florida, SB90—an omnibus voter suppression law passed in 2021—created new onerous requirements for voters who wish to vote by mail. This law came on the heels of an election in which 40 percent of votes cast by Black voters and 41 percent of those cast by Latinx voters were by mail,⁶⁴ and the restrictions make it harder for these communities to vote, by mail or otherwise. The law requires voters to share sensitive information, like the last four digits of one’s social security number, in the mail or over the phone in order to request a mail ballot, a step many voters might find worrisome.⁶⁵ The law also ended the ability of voters to request mail-in ballots for multiple election cycles, now requiring voters to submit a vote-by-mail request each election.⁶⁶ The law criminalized neighbors, community members, and third-party organizations—essentially anyone who is not family—returning completed mail ballots,⁶⁷ a provision that especially negatively impacts voters with disabilities. And, after Black Floridians voting by mail used drop boxes at much higher rates than white Floridians voting by mail,⁶⁸ the law placed severe restrictions on drop boxes, requiring they be monitored by election officials at all times and limiting their locations and hours of operation.⁶⁹ These restrictions have implications for Black and Latinx Floridians, who “tend to have stricter and more unpredictable work obligations that limit their availability during normal voting hours, and who tend to encounter longer lines at their designated polling places.”⁷⁰ In striking down many of SB90’s most discriminatory provisions, a federal judge concluded that “SB 90 effectively bans drop-box use at the specific times and the specific days that Black voters, not all Democratic voters, are most likely to use them.”⁷¹ As detailed further below, the Eleventh Circuit reversed this ruling in April 2023.

⁶³ 2022 Disability Status Report: Alabama, Yang-Tan Institute on Employment and Disability, Cornell University, 2022. <https://www.disabilitystatistics.org/report/pdf/2022/2001000>.

⁶⁴ Complaint at 4, *Florida Rising v. Lee*, No. 4:21-cv-00201-AW-MJF (N.D. Fla. May 17, 2021).

<https://advancementproject.org/resources/florida-rising-v-laurel-m-lee/>

⁶⁵ Florida Senate Bill S.B. 90 (2021) (“S.B. 90”). <https://www.flsenate.gov/Session/Bill/2021/90>

⁶⁶ *Id.* See also *Palm Beach County Voter Notice: Recent Changes to Florida Election Code*, Palm Beach County Supervisor of Elections, July 2021.

[https://www.votepalmbeach.gov/Portals/PalmBeach/Documents/SOE_PBCSB90%20\(1\).pdf](https://www.votepalmbeach.gov/Portals/PalmBeach/Documents/SOE_PBCSB90%20(1).pdf)

⁶⁷ *Supra* notes 65 and 66. Note that Florida law already criminalized returning more than two ballots, if the ballot assister received any kind of pay or benefit for providing the assistance. S.B. 90 removed the remuneration requirement and made it a misdemeanor to provide such ballot assistance period.

⁶⁸ Experts in the trial against SB90 demonstrated that Black voters using mail-in balloting in 2020 “had, on average, 48% and 25% greater odds” in the primary and general elections, respectively, “of voting via drop box than” white voters casting a mail-in ballot. *League of Women Voters v. Lee* (Case No. 4:21-cv-00186), Tr. at 2270-71.

⁶⁹ *Supra* note 66.

⁷⁰ Complaint at 37, *Florida State Conference of Branches and Youth Units of the NAACP v. Lee*, No. 4:21-cv-00187-WS-MAF (N.D. Fla. May 6, 2021), <https://www.naacpldf.org/wp-content/uploads/Florida-Voting-Law-Complaint.pdf>

⁷¹ *League of Women Voters of Florida v. Lee*, 595 F. Supp. 3d 1042, 1117 (N.D. Fla. Mar. 31, 2022). https://www.spicenter.org/sites/default/files/documents/final_order_following_bench_trial.pdf



Florida went even further in restricting opportunities to vote by mail two years later in SB 7050. In its latest omnibus anti-voter law, the state, among other things, shortened the deadline to request a mail ballot by two days, requires voters have an emergency to pick up a mail ballot during early voting, bans anyone but immediate family members from requesting a mail-in ballot on behalf of another voter, canceling any mail-in ballot request for a voter for whom other first-class mail was returned as undeliverable, and blocking the counting of ballots returned in the same envelope as another ballot.⁷²

Georgia's SB202 also took aim at mail voting options, after nearly 30 percent of Black voters cast their ballot by mail in 2020, compared to only 24 percent of white voters.⁷³ The law delayed and compressed the time period for requesting absentee ballots, placed limitations on the use of secure drop boxes as a means of returning absentee ballots, and created restrictions, enforced by criminal penalties, on who is allowed to assist people in submitting an application for an absentee ballot and in submitting the absentee ballot itself.⁷⁴

Louisiana was an early adopter of restrictions on vote by mail. In 2020, when many states were expanding mail voting options in response to the global pandemic, Louisiana lawmakers passed SB 75, which restricted who can serve as the witness required for absentee ballots. The law states that no person, except the immediate family member of a voter, may serve as a witness to more than one voter.⁷⁵ This year, less than a week into the regular legislative session, Louisiana lawmakers had already proposed another bill that would make it harder to vote. HB 476 would prohibit Louisianans from returning by mail more than one absentee ballot for any voter who isn't an immediate family member.⁷⁶ These types of restrictions on a common practice known as community ballot collection disproportionately impact communities of color, who are more likely to rely on neighbors, community members, or third-party organizations for support in returning their absentee ballots.⁷⁷

Not to be outdone by its neighbors, Mississippi has also tightened rules for absentee voting in the wake of 2020. During the 2023 legislative session, lawmakers passed SB2358, which bans friends, neighbors, and volunteers from non-partisan voter services groups from providing assistance to Mississippians who vote absentee and applies harsh criminal penalties to those who

⁷² Florida Senate Bill 7050 (2023) ("S.B. 7050"). <https://www.flsenate.gov/Session/Bill/2023/7050>

⁷³ Kevin Morris, *Georgia's Proposed Voting Restrictions Will Harm Black Voters Most*, Brennan Center for Justice, March 6, 2021. <https://www.brennancenter.org/our-work/research-reports/georgias-proposed-voting-restrictions-will-harm-black-voters-most>

⁷⁴ Georgia Senate Bill 202 (2021) ("S.B. 202"). <https://www.legis.ga.gov/api/legislation/document/20212022/201498>

⁷⁵ Louisiana Senate Bill 75 (2020) ("S.B. 75"). <https://legiscan.com/LA/text/SB75/2020>

⁷⁶ Louisiana House Bill 476 (2024) ("H.B. 476"). <https://legis.la.gov/legis/ViewDocument.aspx?d=1351012>

⁷⁷ Community ballot collection as a part of a broader informal support system among neighborhoods, communities, social circles that helps people with mobility and transportation barriers, including people with disabilities and with no access to transportation, conditions that are both more prevalent in communities of color.



do.⁷⁸ The law also fails to define the term caregiver, threatening to chill voter assistance from staff of health care institutions. Not only does the law place unnecessary and illegal burdens on voters with disabilities—a community that already faces heightened barriers and increased risk of disenfranchisement in our democracy—it also disproportionately affects Mississippians of color. Black and Native Americans in Mississippi are more likely to have a disability than white Mississippians; in 2022, 18.3 percent of Black/African Americans and 20.8 percent of Native Americans reported a disability, compared to 15.3 percent of white Mississippians.⁷⁹ Shortly after the law passed, SPLC and partners challenged the law in court and won a preliminary injunction, preventing the law from taking effect during the 2023 elections and protecting voters who need assistance and those who support them.⁸⁰

D. Voter Registration is Also Being Weaponized in Deep South States Post-*Shelby County* and Disproportionately Impact Voters of Color

Anti-voter forces are also targeting various facets of the voter registration process to diminish the voting power of communities of color.

I. *Discriminatory Exact Match Policies and Laws*

The first step to weaponizing voter registration to keep people of color from voting is to keep these communities off the registration rolls in the first place. From 2010 to 2016, Georgia employed an administrative policy that disproportionately rejected voter registrations from people of color. Under Georgia’s “exact match” policy, a voter’s registration application would not be accepted if the information therein did not perfectly match—down to a hyphen, an accent mark, or the inclusion of a middle initial—records held by the Georgia Department of Drivers Services or the Social Security Administration. The flawed policy meant that tens of thousands of applications from eligible applicants were rejected, and those rejected were disproportionately Black, Latinx, and Asian American applicants. By race, the population of voters attempting to register was 47.2 percent white, 29.4 percent Black, 3.6 percent Latinx, and 2.6 percent Asian, but among applicants who failed the exact match verification procedure, only 13.6 percent were white, while 63.6 percent were Black, 7.9 percent were Latinx, and 4.8 percent were Asian.⁸¹ Georgia maintained this policy despite its awareness of the policy’s discriminatory impact gleaned through the preclearance processes, litigation, and public testimony, and only abandoned

⁷⁸ Ballot Harvesting; Ban. MS SB 2358 (2023) <https://legiscan.com/MS/text/SB2358/id/2642217>

⁷⁹ 2022 Disability Status Report: Mississippi, Yang-Tan Institute on Employment and Disability, Cornell University, 2022. <https://www.disabilitystatistics.org/report/pdf/2022/2028000>

⁸⁰ *Disability Rights Mississippi, et al. v. Lynn Fitch, et al.*, filed May 31, 2023, Southern Poverty Law Center. <https://www.splcenter.org/seeking-justice/case-docket/disability-rights-mississippi-et-al-v-lynn-fitch-et-al>. Lawsuit alleges a violation of Section 208 of the Voting Rights Act. A PI was granted on July 25, 2023; the case is now on appeal before the Fifth Circuit.

⁸¹ Declaration of Christopher Brill, expert witness in lawsuit challenging Georgia’s exact match policy, *Georgia State Conference of the NAACP v. Kemp*, Exhibit 5 at 2, September 13, 2016.



the administrative policy after it was forced to through a settlement in litigation brought by civil and voting rights groups.⁸²

Yet in 2017, only months after agreeing to that settlement, Georgia enacted legislation codifying a version of the “exact match” protocol. Shortly before Georgia’s 2018 gubernatorial election between then-Secretary of State Brian Kemp and former state representative Stacey Abrams, the Associated Press reported that the Secretary of State’s office had placed on hold more than 50,000 voter registrations due to the exact match law. And although Georgia’s population was 32 percent Black, nearly 70 percent of the affected applications belonged to Black voters.⁸³ While the state eventually abandoned the deeply flawed approach to registration after again being sued over it, an untold number of Georgians of color were harmed during its years-long reign.⁸⁴

II. *Improper Removals*

Once voters of color successfully make it onto the registration rolls, they still face challenges staying on the rolls, especially in some Deep South states with overly aggressive list maintenance policies, also known as voter purges. Too often, voter purges disproportionately affect Black voters and other voters of color.⁸⁵

Improper and discriminatory removal practices are a significant problem in Georgia. One recent study of ten states across the country scored Georgia second to last in its list maintenance practices—just 27 percent out of 100—indicating that many elements of its list maintenance practices and procedures risk improperly removing eligible voters.⁸⁶ One of the reasons for this low score is Georgia removes voters who have not voted frequently enough in the eyes of its election officials, a so-called “use it or lose it” policy.⁸⁷ Relying on this policy, Georgia purged a whopping half million people from the registration rolls in one day, more than 100,000 of them

⁸² Stanley Augustin, *Voting Advocates Announce a Settlement of “Exact Match” Lawsuit in Georgia*, Lawyers’ Committee for Civil Rights Under Law, February 10, 2017, <https://www.lawyerscommittee.org/voting-advocates-announce-settlement-exact-match-lawsuit-georgia/>

⁸³ Ben Nadler, *Voting Rights Become a Flash Point in Georgia governor’s Race*, Associated Press, October 9, 2018, <https://apnews.com/article/fb011f39af3b40518b572c8cce6e906c>

⁸⁴ Stanley Augustin, *Georgia Largely Abandons Its Broken “Exact Match” Voter Registration Process*, Lawyers’ Committee for Civil Rights Under Law, April 5, 2019, <https://www.lawyerscommittee.org/georgia-largely-abandons-its-broken-exact-match-voter-registration-process/>

⁸⁵ Liz Kennedy & Danielle Root, *Keeping Voters Off the Rolls: Impact of Documentary Proof of Citizenship and Illegal Voter Purges*, Center for American Progress, July 2017, <https://www.americanprogress.org/article/keeping-voters-off-rolls/>; Michael C. Herron & Daniel A. Smith, *Estimating the Differential Effects of Purging Inactive Registered Voters*, July 25, 2018, <https://csra.wisc.edu/wp-content/uploads/sites/1556/2020/11/herron.pdf>; Brief for NAACP and the Ohio State Conference of the NAACP as Amici Curiae Supporting Respondents, *Husted v. A. Philip Randolph Institute*, 584 U.S. 756 (2018) (No. 16-980), <https://advancementproject.org/resources/amicus-brief-filed-husted-v-philip-randolph-institute/>

⁸⁶ *Protecting Voter Registration: An Assessment of Voter Purge Policies in Ten States*, Demos, August 10, 2023, <https://www.demos.org/sites/default/files/2023-11/Protecting%20Voter%20Registration%20-%20Full%20report.pdf>

⁸⁷ Ga. Code §§ 21-2-234(a)-(c), 21-2-235.



for inactivity. An American Public Media (“APM”) review of the data found that Black voters were canceled at a higher rate than white voters for inactivity in six of every ten counties across Georgia and were removed at a rate of 1.25 times greater than white voters in more than a quarter of those counties.⁸⁸ The purges, moreover, have an extraordinarily high error rate. In 2019, the Secretary of State purged 313,000 voters from the rolls on the grounds that they had moved from the address provided in their registration. An expert study concluded that more than 198,000 of these voters, or 63.3 percent, had not actually moved.⁸⁹ A disproportionate number of voters whose registrations were erroneously canceled were Black or nonwhite.⁹⁰

Mississippi instituted a similar “use it or lose it” policy in 2023 with the passage of HB 1310. The new law mandates the beginning of a removal process if a voter does not vote in an election in the state for four years.⁹¹ The removal process is also triggered if the USPS reports a change-of-address, or if election officials receive “reliable information” a voter has moved from their registered address. Should the affected voters fail to reply to the confirmation notice, they will be forced to vote via affidavit until they provide proof of residency.⁹² While there is not yet data on the racially disparate impact of improper purges in Mississippi following the implementation of this law, there is good reason to fear it will similarly fall hardest on the states with a high proportion of Black voters and other voters of color. Compounding the potentially disenfranchising effects of this policy is the reality that, at 30 days Mississippi has the strictest voter registration deadline in the country,⁹³ and the state does not offer same-day voter registration, meaning voters who do not learn their registrations are cancelled until they show up at the polls have no recourse. In condemning the legislation, one Mississippi lawmaker said “People have to go through what amounts to a reregistration process after they have been registered to vote ... I think it’s punitive in nature, and there’s no reason for it other than what Mississippi appears to be satisfied with being; a state that has not learned any lessons from its history and past.”⁹⁴

Mississippi’s law is also concerning because it creates the risk that eligible voters could be flagged as non-citizens and have their registration placed on inactive status, be forced to vote via affidavit, and provide proof of citizenship within thirty days of receiving a confirmation notice; if they do not respond in time, they will be removed from the rolls entirely.⁹⁵ In nearby Texas, a

⁸⁸ Angela Caputo, Geoff Hing & Johnny Kauffman, *They Didn’t Vote ... Now They Can’t*, APM Reports, October 19, 2018. <https://www.apmreports.org/story/2018/10/19/georgia-voter-purge>

⁸⁹ Greg Palast, *Georgia Voter Roll Purge Errors*, ACLU of Georgia, September 1, 2020. https://www.acluga.org/sites/default/files/georgia_voter_roll_purge_errors_report.pdf

⁹⁰ *Id.*

⁹¹ Miss. Code § 23-15-152.

⁹² Mississippi House Bill 1310 (“H.B. 1310”). <https://billstatus.ls.state.ms.us/2023/pdf/history/HB/HB1310.xml>

⁹³ Secretary of State Michael Watson, *Voter Registration Information*, 2024. https://www.sos.ms.gov/elections-voting/voter-registration-information?ref=voteusa_en

⁹⁴ Kobe Vanc, *Mississippi Legislature Passes Bill to Purge Voter Rolls*, MPB, March 29, 2023. <https://www.mpbonline.org/blogs/news/mississippi-legislature-passes-bill-to-purge-voter-rolls/>

⁹⁵ *Supra* note 92 (“H.B. 1310”)



flawed review of the registration rolls flagged thousands of naturalized citizens—who are fully eligible and entitled to vote—as ineligible, and the Secretary of State directed counties to investigate them.⁹⁶ Further, ample evidence demonstrates that people of color are less likely to possess the documentation often required to prove their identity for the purposes of voting,⁹⁷ meaning this law is likely to disproportionately disenfranchise Mississippians of color.

III. Mass Challenges

In Georgia, anti-voter activists have brought hundreds of thousands of challenges to voter registrations and voter eligibility across the state in a coordinated effort to burden election boards and intimidate voters. In 2020, prior to the Senate runoff elections, a conservative organization challenged the right to vote of over 300,000 Georgia citizens.⁹⁸ Voting rights advocates promptly sued the organization.⁹⁹ Following unprecedented turnout of voters of color in the runoff elections, Georgia then gave the green light to frivolous voter challenges and voter intimidation through a provision in SB 202 clarifying that any Georgia citizen can bring an unlimited number of challenges to the voting rights of their fellow citizens.¹⁰⁰

Emboldened by the new law, voter challenges have run rampant across the state since then, crippling election boards and unfairly targeting voters of color, young people, and unhoused people. In fact, since Governor Kemp signed SB 202 into law, anti-voter activists have challenged the eligibility of over 100,000 Georgia voters, disproportionately targeting counties with the most Black and brown voters.¹⁰¹ In addition, while data analysis remains ongoing, voting rights advocates tracking voter challenges have found that Black voters are more likely to have their voter eligibility challenged within those counties as well.

⁹⁶ Alex Ura, *Texas Will End Its Botched Voter Citizenship Review and Rescind Its List of Flagged Voters*, Texas Tribune, April 26, 2019, <https://www.texastribune.org/2019/04/26/texas-voting-rights-groups-win-settlement-secretary-of-state/>

⁹⁷ *Supra* note 10 Brennan Center.

⁹⁸ Mark Niese, *Eligibility of 364,000 Georgia Voters Challenged Before Senate Runoff*, Atlanta Journal Constitution, December 22, 2020, <https://www.ajc.com/politics/eligibility-of-364000-georgia-voters-challenged-before-senate-runoff/3UJMDOVRFVERXOJ3IBHYWZBWYI/>

⁹⁹ See Complaint, *Fair Fight, Inc. v. True the Vote, Inc.*, No. 2:20-cv-00302 (N.D. Ga. Mar. 22, 2021), https://fairfight.com/wp-content/uploads/2021/05/TTV-Am.-Compl.-with-exhibits_Part1.pdf?x58856. In January 2024, a federal judge ruled the challenges do not violate the VRA. See Nick Corasaniti, *Conservative Group Wins Legal Victory 2020 Voting Challenges in Georgia*, The New York Times, January 2, 2024, <https://www.nytimes.com/2024/01/02/us/politics/true-the-vote-fair-fight-georgia.html>

¹⁰⁰ *Supra* note 74, “S.B. 202”

¹⁰¹ Doug Bock Clark, *Close to 100,000 Voter Registrations Were Challenged in Georgia – Almost All by Just Six Right-Wing Activists*, ProPublica, July 13, 2023, <https://www.propublica.org/article/right-wing-activists-georgia-voter-challenges>



Without intervention, the proliferation of mass voter challenges in Georgia is only likely to increase. Indeed, the Georgia legislature is presently considering legislation to lower the standards for voter challenges and give additional rights to those who bring challenges, which would motivate even more conspiracy theorists to bring challenges while further overwhelming under-resourced local election boards.

IV. Restrictions on Third-Party Voting Registration Organizations

Third-party voter registration organizations (3PVROs) play a vital role in ensuring that all Floridians have access to the electoral process. In 2022, approximately 63 percent of the voting-age population was registered to vote in Florida according to U.S. Census Bureau estimates, which ranks Florida 47th out of the 50 states and the District of Columbia.¹⁰² Voters of color rely on 3PVROs for voter registration and participation in the political process. Indeed, 3PVROs register one out of every ten Black voters and one out of every ten Hispanic voters compared to one out of every 50 white voters.¹⁰³ Despite data showing that citizens in Florida need increased opportunities for voter registration and that 3PVROs fulfill an essential role in registering voters of color, Florida has continuously targeted these organizations and attempted to hinder their voter registration efforts.

Most recently, in 2023, Governor DeSantis signed a sweeping bill directly targeting 3PVROs and placing severe burdens on their voter registration activities.¹⁰⁴ SB 7050 effectively stopped organizations from doing their important work and risks disenfranchising the voters that the organizations are dedicated to assisting. The new law imposes onerous requirements on 3PVROs, including requiring organizations to register for every single election cycle and shortening the amount of time organizations have to return applications from 14 days to 10 days while substantially increasing the fine for late delivery. In addition, by preventing organizations from retaining an applicant's contact information, the law also prevents 3PVROs from carrying out a core function of their mission in ensuring that the community members they serve remain engaged in the political process after registration. SB 7050 also attempted to ban all non-citizens and people with certain felony convictions from collecting or handling voter registration applications on behalf of a 3PVRO and impose a fine of \$50,000 for each violation.¹⁰⁵ Overall,

¹⁰² See *Voting and Registration in the Election of November 2022—Table 4a*, U.S. CENSUS BUREAU, <https://www.census.gov/data/tables/time-series/demo/voting-and-registration/p20-586.html>

¹⁰³ See Smith, Daniel A., Expert Report Submitted on Behalf of *Florida State Conference of NAACP v. Lee*, 4:21-cv-187-MW-MAF, and *Florida Rising Together v. Lee*, 4:21-cv-201-MW-MJF, September 2021, available at <https://www.brennancenter.org/sites/default/files/2022-03/Dr.%20Daniel%20A.%20Smith%20-%20Expert%20Report.pdf>.

¹⁰⁴ *Supra* note 72 (“S.B. 7050”)

¹⁰⁵ A federal district court recently ruled that the ban on non-citizens collecting and handling voter registration applications violated the Equal Protection Clause, so this provision is not in effect at this time. See *Victory in*



the law increases the total aggregate fine an organization can face each year from \$50,000 to \$250,000. Due to these inordinately burdensome regulations, many 3PVRs ceased voter registration when the law came into effect, exactly as Florida's anti-voter forces intended.

SB 7050 is part of a historical pattern and practice of laws targeting 3PVR groups. The evisceration of the Voting Rights Act following the passage of *Shelby County v. Holder* has allowed restrictive voting laws and voter intimidation via legislation to proliferate.

E. Other Changes to Voting Laws Make Participation Harder for Communities of Color

Changes to voting laws in the Deep South that make it harder for people of color to vote are not confined to the areas listed above. Freed from the protections provided to these voters by preclearance, state lawmakers are pursuing sweeping changes to the way elections are run that impact nearly every aspect of the voting process.

I. Restrictions on Curbside and Mobile Voting

For example, accommodations for vulnerable voters have come under attack. In the final hours of the 2021 legislative session, Alabama passed HB285 banning curbside voting and prohibiting even election officers and poll workers from taking any ballots to or from the polling place on Election Day.¹⁰⁶ Curbside voting was a lifeline for voters with disabilities, elderly voters, and other high-risk voters during the 2020 elections taking place amidst a deadly pandemic,¹⁰⁷ and it has been successfully and securely used during elections outside the context of a pandemic for the ways it supports participation by these and other vulnerable communities.¹⁰⁸ But not in Alabama. Though the practice has never been used in the state, lawmakers fought tooth and nail to outlaw it in 2021 with one more law that likely has a discriminatory impact on the Black Alabamians and other Alabamians of color who are more likely to have a disability than white Alabamians.¹⁰⁹

Challenge Against Florida's Anti-Voter Law, American Civil Liberties Union of Florida, March 1, 2024. <https://www.aclufl.org/en/press-releases/victory-challenge-against-floridas-anti-voter-law>. However, the court found the plaintiffs lacked standing to challenge the ban on people with certain felony convictions collecting and handling voter registration application, so that provision remains in place. See Rachel Selzer, *Federal Judge Upholds Provision of Florida's Anti-Voting Law*, Democracy Docket, February 14, 2024. <https://www.democracydocket.com/news-alerts/federal-judge-upholds-provision-of-floridas-2023-anti-voting-law/>. Trial in all three consolidated cases challenging additional provisions of the legislation begins on April 1, 2024.

¹⁰⁶ Ala. Code § 17-6-4.

¹⁰⁷ Lillian Aluri, *COVID-19 and the Disability Vote*, American Association of People with Disabilities, September 2020. <https://www.aapd.com/wp-content/uploads/2024/02/COVID-19-and-the-Disability-Vote.pdf>

¹⁰⁸ *Curbside Voting*, Election Assistance Commission, May 1, 2022.

https://www.eac.gov/sites/default/files/electionofficials/QuickStartGuides/Curbside_Voting_EAC_Quick_Start_Guide_508.pdf. See also *Curbside Voting for Voters With Disabilities*, Movement Advancement Project. https://www.lgbtmap.org/democracy-maps/curbside_voting

¹⁰⁹ *2022 Disability Status Report: Alabama*, Yang-Tan Institute on Employment and Disability, Cornell University, 2022. <https://www.disabilitystatistics.org/report/pdf/2022/2001000>



Another innovation some states pursued to protect voters and election workers alike during the 2020 elections is mobile voting. Fulton County, Georgia, for example, purchased two mobile voting units that made stops at twenty-four different locations, including several Black churches, during the advance voting period ahead of the General Election.¹¹⁰ After historic turnout in that election, and the subsequent runoff, among Georgia voters—especially voters of color—Georgia lawmakers swiftly passed an omnibus anti-voter law that rolled back any of the voting and voter engagement methods employed by communities of color in 2020, including mobile voting.¹¹¹ SB202 restricts the use of mobile voting units to situations where an emergency is declared by the Governor, a declaration that may only occur under narrow circumstances and only after particular procedures are taken, including a convening of a special session of the General Assembly. SB202 also restricts the use of mobile voting units to supplement existing polling locations during the early voting period.¹¹²

II. Criminalization of Providing Food and Water

First in Florida with SB90 and, subsequently, in Georgia with SB202, lawmakers took aim at the community members and third-party organizations—like the Black church—that have historically helped keep voters hydrated and motivated by providing water and snacks to those waiting in long lines.¹¹³ This practice, often known as “line-warming,” has been a staple of non-partisan get-out-the-vote efforts for years and is used especially by civic organizations and churches in communities of color to support voters.¹¹⁴ In 2020, in the face of long lines on Election Day, free food and water from volunteers and third-party organizations helped voters sustain their strength and make it into the voting booth.

Florida’s provision in SB90 was vague, stating that non-election workers cannot engage in “any activity with the intent to influence or effect of influencing a voter” within 150 feet of a polling location.¹¹⁵ In Florida and elsewhere, voters of color are more likely to stand in long lines than white voters.¹¹⁶ In striking down the ban on line-warming in SB90, a federal judge wrote that the “Court concludes that the solicitation definition will have a disparate impact on minority voters

¹¹⁰ *Early Voting Starts Today & Fulton Mobile Voting Unites Hit the Streets*, Fulton County, October 12, 2020. <https://www.fultoncountyga.gov/news/2020/10/12/early-voting-and-fulton-mobile-voting-units-hit-the-streets>

¹¹¹ *Supra* note 74 (“S.B. 202”)

¹¹² *Id.*

¹¹³ *Supra* notes 65 (“S.B. 90”) and 74 (“S.B. 202”)

¹¹⁴ First Amended Complaint at 67, *Sixth District of the African Methodist Episcopal Church v. Kemp*, 574 F. Supp. 3d 1260 (N.D. Ga. May 24, 2021), see “plaintiffs.”

https://www.splcenter.org/sites/default/files/documents/083_ame_et_al_fac.pdf

¹¹⁵ *Supra* notes 65 (“S.B. 90”)

¹¹⁶ M. Keith Chen, Kareem Haggag, Devin G. Pope, Ryne Rohla, *Racial Disparities in Voting Wait Times: Evidence from Smartphone Data*, Cornell University, last revised October 31, 2020. <https://arxiv.org/abs/1909.00024>



because minority voters are disproportionately likely to wait in line to vote, and because the provision discourages third parties from helping those waiting to vote.”¹¹⁷

Georgia’s provision banning line warming came in SB202, the omnibus anti-voter bill passed in the wake of historic turnout by Georgians of color in the 2020 general and runoff elections. The provision criminalizes volunteers who provide free food, seating, and water, or any other “gifts,”—such as a folding chair or an umbrella for shade to an elderly voter—as well as other practices and materials associated with line relief, to voters standing within 150 feet of the outer edge of a polling place. It also prohibits a volunteer from coming within 25 feet of any voter standing in line, even outside of the 150-foot zone, effectively covering conduct hundreds of feet in distance from the polling place entrance.¹¹⁸ Georgians who violate this ban are subject to a misdemeanor charge.¹¹⁹ The SPLC and other civil rights organizations brought a case against SB202, challenging the line-warming ban and several other discriminatory provisions in the law.¹²⁰ Thanks to that case, a federal judge has also blocked the line-warming ban in Georgia from going into effect, at least temporarily.¹²¹

III. Changes to Election Dates and Shortened Early Voting and Runoff Periods

Provisions in recent laws passed by the Alabama and Georgia legislatures also reduced the length of time between the general election and the runoff. In Alabama’s case, SB119¹²² cut the runoff period from six weeks down to four. Similarly, state lawmakers in Georgia changed the rules for their own runoffs, reducing the period between the general and the runoff by five weeks to just 28 days.¹²³ The much-shortened turnaround time between the general and the runoff increased challenges both for election workers processing mail-in ballot requests and for people who cannot vote in person and rely on voting by mail; the change likely prevented some voters in this category from voting. The change also prevents newly eligible voters from voting in runoff elections, since Georgia’s registration deadline is 29 days before an election (one of the harshest registration deadlines in the country).¹²⁴ The law also drastically reduces the early voting period for runoffs from three weeks to just one week, with no mandatory weekend voting days,

¹¹⁷ *League of Women Voters of Florida v. Lee*, 595 F. Supp. 3d 1042, 1107 (N.D. Fla. Mar. 31, 2022).

https://www.splcenter.org/sites/default/files/documents/final_order_following_bench_trial.pdf

¹¹⁸ *Supra* note 74 (“S.B. 202”)

¹¹⁹ *Id.*

¹²⁰ *Complaint, Sixth District of the African Methodist Episcopal Church v. Kemp*, 574 F. Supp. 3d 1260 (N.D. Ga. Mar. 22, 2021). <https://www.splcenter.org/seeking-justice/case-docket/sixth-district-african-methodist-episcopal-church-v-kemp>

¹²¹ *In re Georgia Senate Bill 202, No. 1:21-mi-55555-JPB* (N.D. Ga. Aug. 18, 2023) (order granting preliminary injunction). <https://www.splcenter.org/sites/default/files/documents/ame-v-kemp-line-relief-preliminary-injunction-order.pdf>

¹²² *Alabama Senate Bill 199* (“S.B. 119”). <https://arc-sos.state.al.us/ucp/L0585271.A11.pdf>; *Alabama Senate Bill 31* (“S.B. 31”). <https://arc-sos.state.al.us/ucp/L0586681.A11.pdf>

¹²³ *Supra* note 74 (“S.B. 202”)

¹²⁴ *Elections FAQ*, Georgia Secretary of State. <https://sos.ga.gov/page/elections-faq>



including Sunday voting.¹²⁵ In addition to making the already difficult lives of election workers even more complicated, this law is designed to prevent Black voters in Georgia from again exercising the power they wielded during the runoff period in 2020, when Georgia voters of all races—led by Black voters—elected their first Black Senator.¹²⁶ That year, instead of the significant drop off usually seen during runoff elections, Black voter turnout was 91.8 percent of that in November’s General Election.¹²⁷

SB202 was not Georgia’s first effort to restrict voting hours and days to limit the power of Black voters and other voters of color. Following the *Shelby County* decision and up to this very day, lawmakers in the state have repeatedly attempted to shorten the state’s early voting period. In 2014, Georgia lawmakers proposed a bill that would have reduced early voting to just 6 days for small, consolidated cities.¹²⁸ That same year, one lawmaker explained that he opposed Sunday voting at a local mall because it was “dominated by African American shoppers” and was “near several large African American mega churches” and that he “prefer[red] more educated voters than a greater increase in the number of voters.”¹²⁹ In 2015, lawmakers introduced a bill that would have reduced early in-person voting from 21 days to 12 days and restricted the availability of Sunday voting, which is disproportionately used by Black voters.¹³⁰

In 2020, Cobb County—Georgia’s third largest county and whose population is 26.6 percent Black and 14.5 percent Latinx—decided to cut the number of early voting sites for the Runoff Elections from eleven to five, despite the need to serve more than 537,000 voters.¹³¹ The closures

¹²⁵ *Supra* note 74 (“S.B. 202”)

¹²⁶ Peter Beaumont, *Why Raphael Warnock was elected Georgia’s first black US Senator*, the Guardian, January 6, 2021. <https://www.theguardian.com/us-news/2021/jan/06/why-raphael-warnock-was-elected-georgia-first-black-us-senator>

¹²⁷ Bernard L. Fraga, Zachary Peskowitz, and James Szewczyk, *New Georgia runoffs data finds that more Black voters than usual came out. Trump voters stayed home*, the Washington Post, January 29, 2021. <https://www.washingtonpost.com/politics/2021/01/29/new-georgia-runoffs-data-finds-that-more-black-voters-than-usual-came-out-trump-voters-stayed-home/>

¹²⁸ Georgia House Bill 891 (2014) (“H.B. 2014”). See also David Wickert, *Bill would allow cities to cut early voting*, the Atlanta Journal Constitution, March 11, 2014. <https://www.ajc.com/news/state--regional/bill-would-allow-cities-cut-early-voting/JFLHbVxcNC18oWnNbPaFFL/>

¹²⁹ *Supra* note 28, H.R. Rep. No. 116-317, at 36.

¹³⁰ Georgia House Bill 194 (2015) (“H.B. 194”), <https://www.legis.ga.gov/api/legislation/document/20152016/147816>. See also Jonathan Shapiro, *Bill Cutting Early Voting Days Clears House Committee*, WABE, February 11, 2015. https://www.wabe.org/bill-cutting-early-voting-days-clears-house-committee/?utm_campaign=Peach%20Pundit%20Daily%20-%2002%2F12%2F2015%20Edition&utm_source=Signal&utm_medium=email

¹³¹ Meris Lutz, *Cobb: Fewer early voting sites than neighbors for Senate runoff*, the Atlanta Journal Constitution, December 2, 2020. <https://www.ajc.com/news/atlanta-news/cobb-to-open-fewer-early-voting-sites-than-neighbors-for-senate-runoff/ZKPIYHF5BFCYDOXTDCADZBGS5U/>. See also Vanessa Williams, *Voting rights groups alarmed after Cobb County cuts half its early-voting sites for Ga. Senate runoffs*, the Washington Post, December 7, 2020. <https://www.ajc.com/news/atlanta-news/cobb-to-open-fewer-early-voting-sites-than-neighbors-for-senate-runoff/ZKPIYHF5BFCYDOXTDCADZBGS5U/>



were concentrated in communities of color: most of the county’s Black and Latinx voters lived in an area that had previously had four polling places; Cobb County consolidated these sites into a single location.¹³² Black and Latinx voters are more likely to live in poverty than other residents and to have more difficulty traveling long distances due to limited public transportation options.¹³³ The polling place closures would have disproportionately deterred voters of color from participating in the runoffs. After public outcry and the threat of litigation, Cobb County added two sites and moved the location of a third.¹³⁴

Congressional and State Legislative Maps Passed Post-*Shelby County* Illegally Dilute the Voting Power of Communities of Color in the Deep South

The 2021 redistricting cycle was the first without the full protections of the Voting Rights Act. Previously, Alabama, Georgia, Louisiana, and Mississippi each had to preclear their proposed maps with the DOJ or a federal court to ensure they did not violate the constitutional rights of Black voters and other voters of color within their borders. Thanks to the protections of the VRA, the hundreds of attempts by these states to deny and dilute the voting power of residents of color over nearly half a century were largely blocked.

The breadth of these attempts over the decades—and the brazen discrimination in districting of the first cycle without the protections of preclearance—highlight the determination of Deep South lawmakers to prevent Black voters and other voters of color from gaining any meaningful political power at any level of government – not just back in 1965, but in the decades since right up to today.

And this decade—the first without the full protections of the VRA—map drawers in Deep South states have diluted the voting rights and political power of communities of color with impunity. In fact, six of nine previously covered states nationally, including Alabama, Georgia, Louisiana, and Mississippi, have had their congressional and state legislative maps challenged as racially discriminatory.¹³⁵ In addition, Florida—which was not covered statewide by preclearance—has faced suits for racial discrimination in redistricting post-2021; the congressional maps were

¹³² *Id.*

¹³³ *Mobility Challenges for Households in Poverty*, U.S. Department of Transportation, Federal Highway Administration, National Household Travel Survey, 2014. <https://nhts.ornl.gov/briefs/PovertyBrief.pdf>. See also Gaurav Bagwe, Juan Margitic, and Allison Stashko, *Polling Place Location and the Costs of Voting*, July 5, 2022. https://jmarginitic.github.io/JM/Margitic_JMP.pdf

¹³⁴ Vanessa Williams, *After criticism, Georgia’s Cobb County restores some early-voting sites for Senate runoffs*, the Washington Post, December 9, 2020. <https://www.washingtonpost.com/politics/2020/12/09/after-criticism-cobb-county-restores-some-early-voting-sites-ga-senate-runoffs/>

¹³⁵ In addition to Alabama, Georgia, Louisiana, and Mississippi, both South Carolina and Texas are in active litigation for alleged racially discriminatory maps. See All About Redistricting. <https://redistricting.ils.edu/cases/?cycles%5B%5D=2020&states%5B%5D=Alabama&states%5B%5D=Alaska&states%5B%5D=Arizona&states%5B%5D=Georgia&states%5B%5D=Louisiana&states%5B%5D=Mississippi&states%5B%5D=South%20Carolina&states%5B%5D=Texas&states%5B%5D=Virginia&sortBy=-updated&page=2>



challenged for intentional racial discrimination in violation of the US Constitution and vote dilution and retrogression in violation of the State Constitution.¹³⁶

A. Deep South States Defied the Mandates of the VRA for Decades Following 1965

In five of the six redistricting cycles since the VRA first passed, the U.S. Department of Justice or federal courts found that Alabama’s congressional and/or state legislative maps violate the voting rights of Black Alabamians.¹³⁷ In the first redistricting cycle after 1965, the Alabama legislature failed to redistrict and a three-judge federal court was forced to draw new district lines to protect voters’ rights under the Fourteenth Amendment.¹³⁸ In the next, the U.S. Attorney General denied preclearance to maps for the State House and Senate seats, finding the maps improperly retrogressive for Black voters in Jefferson County and the cities of Tuscaloosa and Mobile.¹³⁹ In the 90s, Alabama had to enter into a consent decree that created several new majority-Black state House and Senate districts¹⁴⁰ and a settlement agreement on the congressional districts that created the state’s first Black opportunity district since Reconstruction.¹⁴¹ After the 2011 redistricting cycle, a federal court struck down 12 legislative districts as unconstitutional racial gerrymanders.¹⁴²

From 1965 to 2012, Georgia’s racially discriminatory voting schemes necessitated federal intervention 187 times, including over 91 objections since the 1982 reauthorization of Section 5 of the VRA.¹⁴³ In the first redistricting cycle after the passage of the Voting Rights Act of 1965, the U.S. Department of Justice objected to the congressional redistricting plan under Section 5 of the VRA’s preclearance provisions based on its inability to conclude “that [the] new boundaries [would] not have a discriminatory racial effect on voting by minimizing or diluting black voting strength in the Atlanta area.”¹⁴⁴ The next decade, the DOJ again objected to the state’s congressional maps, and a federal court subsequently found that “There was no legitimate, nondiscriminatory reason why the Fifth District was drawn the way it was. ... The Fifth District

¹³⁶ *Common Cause Florida v. Byrd*, challenging Florida’s congressional maps in federal court and *Black Voters Matter Capacity Building Institute v. Byrd*, challenging Florida’s congressional maps in state court.

¹³⁷ *Voting Determination Letters for Alabama*, U.S. Department of Justice, Civil Rights Division.

<https://www.justice.gov/crt/voting-determination-letters-alabama>

¹³⁸ *Sims v. Amos*, 336 F. Supp. 924, 940 (M.D. Ala. 1972).

¹³⁹ U.S. Dep’t of Justice Ltr. to Ala. Att’y General Graddick, May 6, 1982.

<https://www.justice.gov/sites/default/files/crt/legacy/2014/05/30/AL-1520.pdf>

¹⁴⁰ *Kelley v. Bennett*, 96 F. Supp. 2d 1301, 1309 (M.D. Ala. 2000).

¹⁴¹ *Wesch v. Hunt*, 785 F. Supp. 1491, 1497-1500 (S.D. Ala. 1992), *aff’d sub nom.* *Camp v. Wesch*, 504 U.S. 902 (1992), and *aff’d sub nom.* *Figures v. Hunt*, 507 U.S. 901 (1993).

¹⁴² *Ala. Legis. Black Caucus v. Alabama*, 231 F. Supp. 3d 1026, 1348-49 (M.D. Ala. 2017)

¹⁴³ *Voting Determination Letters for Georgia*, U.S. Department of Justice, Civil Rights Division.

<https://www.justice.gov/crt/voting-determination-letters-georgia>

¹⁴⁴ Letter from David L. Norman, Assistant Attorney General, U.S. Department of Justice, Civil Rights Division, to the Hon. Arthur K. Bolton, Attorney General, State of Georgia (Feb. 11, 1972),

https://www.justice.gov/crt/records/vot/obj_letters/letters/GA/GA-1140.pdf



was drawn to suppress black voting strength in Georgia.”¹⁴⁵ Georgia’s 1992 redistricting plans were similarly denied, twice, by the DOJ,¹⁴⁶ and the late Congressman John Lewis described the state’s 2011 redistricting plan as “an affront to the spirit and the letter of the Voting Rights Act.”¹⁴⁷

Plans that dilute the voting strength of people of color have also characterized Florida’s redistricting processes over the last several decades.¹⁴⁸ The U.S. Attorney General objected to the state’s 1992 Senate redistricting plan under Section 5 of the Voting Rights Act’s preclearance provisions because “the state chose to divide the politically cohesive minority populations in the Tampa and St. Petersburg areas,” while rejecting “[a]lternative plans . . . uniting the Tampa and St. Petersburg minority populations [that would have] provide[d] minority voters an effective opportunity to elect their preferred candidate to the State Senate.”¹⁴⁹ The Department of Justice also denied Section 5 preclearance to Florida’s 2002 House redistricting plan, which decreased one district’s Hispanic voting-age population from 74.4 to 27.5 percent, thereby eliminating “the effective exercise of [Collier County Hispanic voters’] electoral franchise.”¹⁵⁰

Shortly after the passage of the VRA, Louisiana, too, began developing new tactics to suppress Black voting power. Between 1965, when the VRA was first passed and Louisiana came into preclearance coverage, and 2006, when the VRA was last reauthorized, the DOJ objected to

¹⁴⁵ *Busbee v. Smith*, 549 F. Supp. 494, 514-15 (D.D.C. 1982), *aff’d mem.*, 459 U.S. 1166 (1983).

¹⁴⁶ Letter from John R. Dunne, Assistant Attorney General, U.S. Department of Justice, Civil Rights Division, to Mark H. Cohen, Senior Assistant Attorney General, State of Georgia (Jan. 21, 1992).

https://www.justice.gov/crt/records/vot/obj_letters/letters/GA/GA-2330.pdf

¹⁴⁷ Aaron Gould Sheinin, *GOP Redistricting Plan Would Tighten Grip on Congressional Delegation*, *Atlanta Journal-Constitution*, August 23, 2011. <https://www.ajc.com/news/local-govt--politics/gop-redistricting-plan-would-tighten-grip-congressional-delegation/7pf5U0xghjknRczQUW7O8O/>

¹⁴⁸ Florida’s extensive history of discrimination against people of color has extended to all facets of political participation. *See, e.g., Madera v. Detzner*, 325 F. Supp. 3d 1269 (N.D. Fla. 2018) (“Here we are again. The clock hits 6:00 a.m. Sonny and Cher’s ‘I Got You Babe’ starts playing. Denizens of and visitors to Punksutawney, Pennsylvania eagerly await the groundhog’s prediction. And the state of Florida is alleged to violate federal law in its handling of elections.”); JoNel Newman, *Voting Rights in Florida 1982 – 2006*, University of Miami School of Law Institutional Repository, March 2006.

https://repository.law.miami.edu/cgi/viewcontent.cgi?article=1010&context=fac_short_works; Laughlin McDonald & Daniel Levitas, *The Case for Extending and Amending the Voting Rights Act*, ACLU, at 70–107, March 2006.

<https://www.aclu.org/other/case-extending-and-amending-voting-rights-act?redirect=voting-rights/case-extending-and-amending-voting-rights-act>; *Current Conditions of Voting Rights Discrimination: Florida*, Advancement Project, August 16, 2021. <https://docs.house.gov/meetings/JU/JU10/20210816/114010/HHRG-117-JU10-Wstate-HendersonW-20210816-SD011.pdf>

¹⁴⁹ Letter from John R. Dunne, Assistant Attorney General, Civil Rights Division, to Robert A. Butterworth, Attorney General, State of Florida (June 16, 1992). <https://www.justice.gov/sites/default/files/crt/legacy/2014/05/30/FL-1020.pdf> (also noting there were other possible Voting Rights violations in the Florida redistricting plan beyond the five counties subject to Section 5 preclearance jurisdiction).

¹⁵⁰ Letter from Ralph F. Boyd, Jr., Assistant Attorney General, to John M. McKay, President of the Florida Senate, and Tom Feeney, Speaker of the Florida House of Representatives (July 1, 2002). <https://www.justice.gov/sites/default/files/crt/legacy/2014/05/30/FL-1040.pdf>



discriminatory voting changes in the state 146 times.¹⁵¹ Nearly 100 of those objections came after the last reauthorization in 1982, i.e. – many of those instances of discrimination took place not in 1965 or the years immediately following, but in recent decades. Many of these were discriminatory districting plans that would have diluted Black voting strength and others were methods of drowning out any political power of Black communities, like at-large voting schemes.

In the immediate wake of the passage of the VRA, Mississippi officials simply refused to comply with their obligations under Section 5. In 1966, the state passed multiple laws denying or diluting the voting rights of Black Mississippians, refusing to preclear them with the DOJ or a federal court as required by federal law.¹⁵² It was only after Black Mississippians challenged these laws in court and the Supreme Court ordered compliance with Sec 5¹⁵³ that the state finally submitted the laws for review and, in 1969, the DOJ objected to all of them for their racially discriminatory impact.¹⁵⁴ As with other Deep South states, this defiance was not limited to the years immediately following 1965. Between 1965 and 2006, DOJ issued 169 objections to voting changes in the state.¹⁵⁵ The majority of these objections (104) related to redistricting plans, although DOJ also objected to a panoply of other measures related to at-large elections, candidate qualification requirements, polling place relocations, open primary laws, and other laws specifically targeted to disenfranchising Black voters and diluting Black political power.

B. Alabama Continues to Dilute the Voting Power of Black Residents to this Day

One of the most egregious examples of previously covered states continuing to violate the voting and representational rights of its residents of color is the state of Alabama. Freed from the guardrails of preclearance, Alabama legislators passed a congressional map that diluted the voting rights of Black Alabamians. Despite making up 27 percent of the state’s population, and a significant share of the state’s population growth over the preceding decade,¹⁵⁶ Black Alabamians were once again packed into Congressional District 7—then the state’s lone district represented by a Black Alabamian, and itself a remedy for a VRA violation a few redistricting cycles before—or cracked across multiple districts, such that they could not ever elect a candidate of

¹⁵¹ Debo P. Adegbile, *Voting Rights in Louisiana 1982-2006*, RenewtheVRA.org, at 5, March 2006.

<http://www.protectcivilrights.org/pdf/voting/LouisianaVRA.pdf>

¹⁵² Frank Parker. (1990). *Black Votes Count: Political Empowerment in Mississippi After 1965*, University of North Carolina Press; Legislative History of the Voting Rights Act Amendments of 1970 P.L. 91-285, at CRS-7, Congressional Research Serv.

¹⁵³ *Allen v. State Bd. of Elections*, 393 U.S. 544, 563–72 (1969)

¹⁵⁴ Legislative History of the Voting Rights Act Amendments of 1970 P.L. 91-285, at CRS-16-18, Congressional Research Serv.

¹⁵⁵ Robert McDuff, *The Voting Rights Act and Mississippi: 1965-2006*, 17 Rev. L. & Soc. Just. 475, 479 (2008).

https://gould.usc.edu/students/journals/rtsj/issues/assets/docs/issue_17/05_Mississippi_Macro.pdf

¹⁵⁶ Thomas Spencer, *Demographic Change in Alabama, its Counties, and Cities, 2010-2020*, Public Affairs Research Council of Alabama, October 19, 2022. <https://parcalabama.org/demographic-change-in-alabama-its-counties-and-cities-2010-2020/>



their choice. The Northern District for Alabama found the map impermissibly diluted the Black vote in violation of the VRA and ordered the state to draw a new map with a second opportunity district for Black Alabamians, an order the U.S. Supreme Court subsequently upheld.¹⁵⁷ Despite this clear mandate from the courts, Alabama legislators thumbed their noses, reconvening and passing a new map that failed to remedy the VRA violation and again asking the Supreme Court to protect its racial discrimination.¹⁵⁸

While Black Alabamians fighting this discrimination ultimately prevailed, it was not before they suffered a consequential federal election under discriminatory maps that denied them their constitutional rights and, in turn, representation in Congress that could have spent the last two years legislating in their interests. This grave harm cannot be erased; it is not possible to return these two precious years to Black Alabamians. To prevent injustices like this in Alabama and elsewhere moving forward, states with a demonstrable history of discrimination in voting should once again have to preclear their legislative maps before enactment.

Further, it is not just in enacting its congressional districts that Alabama has discriminated against its Black residents; Alabama's state legislative maps also violate the rights of Black Alabamians. In *Stone v. Allen*, SPLC and co-counsel allege Alabama's state senate map dilutes the voting power of Black residents in Montgomery and Huntsville, in violation of Section 2 of the VRA.¹⁵⁹ While this case has not yet been adjudicated, given the state's posture in enacting and then defying court orders on its congressional map, there is good reason to fear the state senate map also illegally discriminates against Black Alabamians.

C. Georgians of Color Lose in Redistricting Without the Protections of the VRA

Similar to Alabama, in Georgia's first redistricting cycle post-*Shelby County*, the Georgia legislature drew discriminatory maps that diluted Black voting strength throughout the state at the congressional, state, and local level. Georgia has regularly sought to suppress the vote of people of color, and of Black voters in particular. The congressional and state legislative maps are its latest assault on the rights of Black voters and other voters of color to participate meaningfully in the democratic process and elect candidates of their choice.

In 2021, unfettered by preclearance restrictions, Georgia adopted a congressional map that diluted Black voting strength in violation of Section 2 of the Voting Rights Act. Last year, a federal court found that the map violated Section 2 of the VRA and ordered that the state draw a remedial map

¹⁵⁷ *Allen v. Milligan*, 599 US 1 (2023).

¹⁵⁸ Kate Shaw, *How the Supreme Court Should Respond to Alabama's Defiance*, The New York Times, September 12, 2023, <https://www.nytimes.com/2023/09/12/opinion/supreme-court-alabama-voting.html>

¹⁵⁹ *Stone v. Allen*, (previously *James Thomas, et al. v. John H. Merrill, et al.*), filed November 15, 2021, Southern Poverty Law Center, <https://www.splcenter.org/seeking-justice/case-docket/james-thomas-et-al-v-john-h-merrill-et-al>



creating an additional Black opportunity district.¹⁶⁰ Instead, the Georgia legislature crafted a map that dismantled Congressional District 7, a majority-minority district held by Black Congresswoman Lucy McBath, marking the second election cycle in a row that Congresswoman McBath has been forced out of her district, and did not create an additional Black opportunity district.¹⁶¹

In ongoing litigation, SPLC and co-counsel allege that the congressional map also racially gerrymandered districts by disregarding traditional redistricting principles and instead employing the tactics of “packing” and “cracking” to reduce the voting strength of Georgia’s Black voters and other voters of color.¹⁶² Specifically, plaintiffs allege that the General Assembly packed District 13 by piecing together portions of six counties to create a sprawling district with a voting age-population that is 66.7 percent Black and 81.2 percent BIPOC; cracked District 6 by removing communities of color and eliminating the opportunity for Black voters and other voters of color to continue to elect their preferred candidate, a Black woman; and cracked District 14 by moving Black communities from part of a core Metropolitan Atlanta county into a predominately white, rural district whose communities do not share their interests, and where Black voters will not be able to elect their preferred candidates.¹⁶³

In 2023, a federal court also found that the State Senate and State House maps violated Section 2 of the VRA. The state drew new maps, but instead of drawing additional Black opportunity districts to remedy the Section 2 violations as the court ordered, the State destroyed districts where Black voters had the opportunity to elect candidates of their choice. Specifically, while the enjoined House map had 69 Black opportunity districts effective for Black voters, the State’s new proposed House plan has only 68 even though the court ordered five additional Black opportunity districts in the House.¹⁶⁴ In addition, the enjoined Senate map had 19 Black opportunity districts, and the State’s new proposed Senate plan only has 20 districts when the court ordered two

¹⁶⁰ Sam Gringlas, *A Federal Judge Says Georgia’s Political Maps Must Be Redrawn for the 2024 Election*, NPR, October 26, 2023, <https://www.npr.org/2023/10/26/1208796830/georgia-redistricting-districts-judge-ruling>

¹⁶¹ Sam Gringlas, *Georgia Lawmakers Have Approved New Political Maps. Now a Judge Will Weigh in*, WABE, December 7, 2023, <https://www.wabe.org/breaking-georgia-lawmakers-have-approved-new-political-maps-now-a-judge-will-weigh-in/>

¹⁶² A federal court found that the congressional map violated Section 2 of the VRA and ordered that the legislature draw a new map. As a result, the legislature drew a new map, and adjudication of the racial gerrymandering claims has been put on hold pending appeal of the court’s ruling under the VRA.

¹⁶³ Amended Complaint, *Common Cause v. Raffensperger*, 1:22-cv-00090-SCJ-SDG-ELB, ECF No. 32, at 2 (N.D. Ga. Mar. 30, 2022).

https://www.splcenter.org/sites/default/files/documents/2022_01_07_georgia_redistricting_complaint.pdf

¹⁶⁴ Brief for Georgia State Conference of the NAACP, Georgia Coalition for the People’s Agenda, Inc., Galeo Latino Community Development Fund, Inc., Common Cause, League of Women Voters of Georgia, Jasmine Bowles, Dr. Cheryl Graves, Dr. Ursula Thomas, Dr. H. Benjamin Williams, and Brianne Perkins as Amici Curiae in Opposition to Defendant’s Proposed Remedial Maps, *Alpha Phi Alpha Fraternity Inc. v. Raffensperger*, No. 1:21-cv-05337-SCJ, ECF No. 363, at 11 (N.D. Ga. Dec. 14, 2023).



additional opportunity districts.¹⁶⁵ Nevertheless, the court accepted the state's new maps over objections from plaintiffs.¹⁶⁶

The SPLC and partners are also challenging racially discriminatory maps at the local level in Georgia. We allege that the state legislature and Board of Education in Cobb County racially gerrymandered the county's school board districts in violation of the 14th Amendment.¹⁶⁷ Cobb County's racial diversification has accelerated substantially since the 2010 census. According to the U.S. Census Bureau's 2020 redistricting data, Cobb County's white adult population decreased from 60.08 percent in 2010 to 51.25 percent in 2020, an 8.83 percentage-point decrease. By contrast, Cobb County's communities of color all saw population growth during that period. In 2010, Cobb County's Black population made up 25 percent of the County; it now makes up 26.6 percent of the County. Cobb County's Latinx population made up 12.3 percent of the County in 2010; it now makes up 14.5 percent of the County.¹⁶⁸ And these trends are likely to continue in the coming years, since Cobb County's youth population skews heavily Black and Latinx. In the face of an increasingly diverse population, the Board's white members and the state legislators who wished to entrench the Board's white majority took advantage of the lifting of the preclearance to enact a map in which Black and Latinx voters are packed into only three of seven districts, despite their making up most of the county's population growth over the last decade.

D. Florida's Maps Violate the Voting Rights of Residents of Color

There were two challenges to Florida's congressional map this redistricting cycle, one challenging the map in state court and another in federal court. In the case challenging the congressional map in state court, plaintiffs allege the congressional map violates the Fair Districts Amendment of the Florida constitution by diminishing the ability of Black Floridians to elect a candidate of their choice.¹⁶⁹ The trial court ruled that the map is impermissibly retrogressive and denies Black Floridians the ability to elect a candidate of their choice, in violation of the state constitution, and ordered the state legislature to draw a new map that complies with the constitution. That ruling was overturned at the appeals court level in December 2023. The case is currently awaiting state supreme court review.¹⁷⁰

A separate case challenges Florida's congressional map in federal court. Plaintiffs in this case allege that the state's congressional map intentionally discriminates against Black voters in

¹⁶⁵ *Id.* at 11-12.

¹⁶⁶ *Alpha Phi Alpha Fraternity Inc. v. Raffensperger*, No. 1:21-cv-05337-SCJ, ECF No. 375 (N.D. Ga. Dec. 28, 2023).

¹⁶⁷ Amended Complaint, *Finn v. Cobb County Board of Elections and Registration*, No. 1:22-cv-02300-ELR (N.D. Ga. June 9, 2022). https://www.splcenter.org/sites/default/files/documents/finn-cobb-county_amended-complaint.pdf

¹⁶⁸ U.S. Census Bureau, Cobb County population facts 2010 and 2020.

¹⁶⁹ *Black Voters Matter Capacity Building Institute v. Byrd*, All About Redistricting, December 29, 2023.

<https://redistricting.ils.edu/case/black-voters-matter-v-lcc/>

¹⁷⁰ *Id.*



northern Florida by cracking communities to diminish their ability to elect candidates of their choice, in violation of the Fourteenth and Fifteenth Amendments.¹⁷¹ Trial took place in this case in September 2023 and plaintiffs are awaiting a ruling.

As with its neighbors, map drawers in Florida have not confined discriminatory districting to congressional maps; voters of color have faced attacks in the local districting process, as well. After the City of Jacksonville packed Black voters into just four of nine districts in north and west Jacksonville, and simultaneously cracked Black populations in other districts, thereby depressing their influence over municipal elections, the SPLC filed a lawsuit in the Northern District of Florida challenging the redistricting maps as racially gerrymandered and violative of the Fourteenth Amendment.¹⁷² The district court and the Eleventh Circuit ruled that the Jacksonville City Council had likely racially gerrymandered the city, and that Jacksonville's proposed interim remedial map did not cure the previous racial gerrymandering, ordering the city to use a plaintiff proposed map pending final resolution of the case.¹⁷³ In the final settlement, the city agreed to adopt the court-approved interim remedial map and use it until the next census cycle. In Jacksonville's subsequent municipal elections, candidates preferred by Black voters won five of the nine council district seats in north and west Jacksonville (a gain of one seat).¹⁷⁴

E. Louisiana Lawmakers Dilute Black Voting Power At Every Level of Government

Louisiana's track record in redistricting was widely understood to be shot through by gamesmanship and racial discrimination. Governor John Bel Edwards vetoed the maps passed by the legislature, saying at the time, "this map violates Section 2 of the Voting Rights Act of 1965 and further is not in line with the principle of fundamental fairness that should have driven this process."¹⁷⁵ Ultimately, the legislature overrode the governor's veto, and the maps went into effect.

Louisiana's Congressional map drew five white-majority districts and only one Black-majority district, meaning that "[a]lthough Black Louisianans make up 33.13 percent of the total

¹⁷¹ *Common Cause Florida v. Byrd, All About Redistricting*, November 3, 2023.

<https://redistricting.ils.edu/case/common-cause-florida-v-lee/>

¹⁷² See *Complaint, Jacksonville Branch of NAACP v. City of Jacksonville*, No. 3:22-cv-493 (M.D. Fla. May 3, 2022). https://www.splcenter.org/sites/default/files/documents/jacksonville_naACP_v_city_of_jacksonville-complaint_3-22-cv-493.pdf

¹⁷³ *Jacksonville Branch of NAACP v. City of Jacksonville*, No. 3:22-CV-493, 2022 WL 17751416 (M.D. Fla. Dec. 19, 2022). <https://www.splcenter.org/sites/default/files/documents/jacksonville-naACP-v-jacksonville-preliminary-injunction-order.pdf>

¹⁷⁴ Rhonda, Sonnenberg, *Black Residents of Florida City See Hope in New, Equitable Voting Maps*, Southern Poverty Law Center, January 25, 2023. <https://www.splcenter.org/news/2023/05/25/black-residents-jacksonville-equitable-voting-map>

¹⁷⁵ Governor's Veto Letters to Speaker of the House and President of the Senate, reprinted in 2022 Official Journal and Legislative Calendar of the Proceedings of the House of Representatives and Senate of the State of Louisiana, 48th Extraordinary Sess. and 2nd Veto Sess., at 188–89, 194–95 (2022).



population and 31.25 percent of the voting age population, they comprise a majority in only 17 percent of Louisiana's congressional districts.¹⁷⁶ Voters sued, and by June 2022, the United States District Court for the Middle District of Louisiana found a likely Section 2 violation – although a remedial map was subsequently delayed by appeals for over a year.¹⁷⁷ It was not until January 19, 2024, that Louisiana lawmakers approved a new congressional map that creates a second Black-majority U.S. House District – a map that arrived three years late for Louisiana's voters.

Much like its sibling Southern states, Louisiana has not limited its racial discrimination in redistricting to its Congressional maps. On Feb. 8, 2024, the United States District Court for the Middle District of Louisiana found the state's legislative maps to be racially discriminatory in violation of Section 2 of the Voting Rights Act following a seven-day bench trial. The court rejected claims that the application of the VRA was unconstitutional, and arguments that the VRA lacks a private right of action.¹⁷⁸ The decision has been appealed.

Further, Louisiana's political subdivisions are also disenfranchising voters of color. Represented by SPLC, the Vermilion Parish chapter of the NAACP is currently fighting in court to secure fair representation for the Black voters of Abbeville,¹⁷⁹ a small town in southwestern Louisiana that has nearly as many Black residents as white residents. Rather than draw new lines for the city council district, Abbeville re-enacted the outdated lines, leaving in place a district map with gross population deviations of up to 10 percent between districts.¹⁸⁰

F. Mississippi Continues its Long Crusade of Diluting Black Political Power

Mississippi is in court for a case challenging its state legislative maps.¹⁸¹ Plaintiffs allege that the state house and senate maps unlawfully dilute the voting strength of Black Mississippians, cracking and packing them such that they cannot participate in the political process equally to white Mississippians. They also allege map drawers engaged in unjustified predominant use of race, in violation of the U.S. Constitution. In their filing, plaintiffs point out that even though Mississippi's population "is almost 38% Black—the highest percentage of any state in the nation—and sizable Black communities exist throughout the State ... Black Mississippians have

¹⁷⁶ *Robinson v. Ardoin*, 605 F. Supp. 3d 759, 851 (M.D. La.), *cert. granted before judgment*, 142 S. Ct. 2892, 213 L. Ed. 2d 1107 (2022), and *cert. dismissed as improvidently granted*, 143 S. Ct. 2654, 216 L. Ed. 2d 1233 (2023), and *vacated and remanded*, 86 F.4th 574 (5th Cir. 2023).

¹⁷⁷ *Id.*

¹⁷⁸ *Nairne v. Ardoin*, No. CV 22-178-SDD-SDJ, 2024 WL 492688 (M.D. La. Feb. 8, 2024).

¹⁷⁹ *Complaint, NAACP, Vermilion Parish Chapter v. City of Abbeville*, No. 6:23-cv-01463 (W.D. La. Oct. 17, 2023). <https://www.splcenter.org/sites/default/files/documents/naacp-vermilion-parish-abbeville-complaint.pdf>

¹⁸⁰ *Id.*

¹⁸¹ *Miss. State Conference of the NAACP v. State Bd. of Election Comm'rs*, All About Redistricting, last updated February 12, 2024. <https://redistricting.ils.edu/case/ms-naacp-v-state-bd/>



been shut out of political power for most of the State’s history.”¹⁸² Trial took place in this case in February 2024 and plaintiffs are awaiting a ruling.

In 2022, the SPLC and co-counsel filed a federal lawsuit challenging the voting district lines used to elect members of the Mississippi Supreme Court. The suit contends that the lines, which have not been adjusted in 35 years, dilute the voting strength of Black voters.¹⁸³ The state’s population is nearly 40% Black, a greater proportion than any other state. However, in the 100 years since Mississippi has elected members to its Supreme Court, there have been only four Black justices to serve – and never more than one at a time. We allege the district lines violate the VRA by unlawfully watering down the voting strength of Black Mississippians. The state’s Black population is sufficiently numerous and concentrated to form a majority in one of the three at-large voting districts that Mississippi uses to elect its nine Supreme Court justices. Yet none of the three districts has a Black majority. And voting is so racially polarized in Mississippi that in the districts as configured, Black voters typically cannot elect candidates of their choice. Our case goes to trial in August 2024.

Deep South States Have Employed Additional Undemocratic Machinations to Disenfranchise Voters of Color

It is not just laws and policies restricting ballot access that have plagued voters of color in the Deep South in the decade since the *Shelby County* decision. State lawmakers have devised additional new ways to disenfranchise, intimidate, and attempt to silence voters of color within their borders.

A. Undoing the Will of the People

One of the most egregious and high-profile examples of this troubling trend is the Florida governor and state legislature’s blatant disregard for the will of the people, as expressed through democratic elections. In November 2018, Floridians passed a historic amendment to their constitution re-enfranchising most people convicted of most felonies once they have served their time in prison.¹⁸⁴ Before Amendment 4, Florida was an extreme outlier among states, denying the voting rights of people caught up in the criminal legal system for life; before Amendment 4, the state permanently disenfranchised 1.68 million people, including 21 percent of—or *more than*

¹⁸² *Id.*; See Amended Complaint, Mississippi State Conference of the NAACP v. State Board of Election Commissioners, No. 3:22-cv-734-DPJ-HSO-LHS (S.D. Miss. Mar. 3, 2023), <https://redistricting.lls.edu/wp-content/uploads/MS-naacp-20230303-amd-complaint.pdf>

¹⁸³ Complaint, White v. State Board of Election Commissioners, No. 4:22-cv-00062-MPM-JMV (N.D. Miss. Apr. 25, 2022), <https://www.splcenter.org/seeking-justice/case-docket/dyamone-white-et-al-v-state-board-election-commissioners-et-al>

¹⁸⁴ Tim Mak, *Over 1 Million Florida Felons Win Right to Vote With Amendment 4*, NPR, November 7, 2018, <https://www.npr.org/2018/11/07/665031366/over-a-million-florida-ex-felons-win-right-to-vote-with-amendment-4>



one if five—Black Floridians people and other people of color.¹⁸⁵ Recognizing the injustice and anti-democratic nature of this longstanding policy, a near supermajority of Floridians come together across race and class to say “no more” and to restore the fundamental right to vote to their friends and neighbors. People across the state and around the country cheered and breathed a sigh of relief – democracy can prevail when enough people care and show up.

As soon as the legislative session opened the following year, Governor Ron DeSantis and the majority in the legislature moved swiftly to undercut the clear mandate of the people of Florida, and to undermine the democratic process. By June of 2019, Florida lawmakers had enacted SB 7066, which creates wealth-based hurdles to voting by requiring the returning citizens recently re-enfranchised by Amendment 4 to pay certain legal financial obligations (LFOs) associated with their sentence—like fines, fees, court costs, and restitution, including when it is converted to a civil lien and cannot be enforced by criminal contempt—before they can register to vote and cast their ballot.¹⁸⁶ As many of these returning citizens were living in poverty before going to prison, and had no ability to pay these legal financial obligations after their release, SB 7066 effectively re-disenfranchised an enormous segment of the population that had recently won its voting rights.¹⁸⁷ As one of five consolidated cases, the SPLC challenged SB7066 as an unconstitutional poll tax that discriminates against people based on their wealth.¹⁸⁸ Though the district court held that aspects of Florida’s “pay-to-vote” system were unconstitutional,¹⁸⁹ the Eleventh Circuit reversed and vacated that ruling.¹⁹⁰

SB7066 significantly undermined Floridians’ overwhelming support for Amendment 4; paying off LFOs was not a requirement contemplated by the proponents, the press, and the voters of Florida who passed the amendment and believed “at least 1.4 million people would have their right to vote immediately restored.”¹⁹¹ But, as usual, lawmakers in Florida had different plans for the state. In the chaos that followed the passage of SB 7066, returning citizens and election workers alike were perplexed by the confusing, opaque system for determining a voter’s

¹⁸⁵ *6 Million Lost Voters: State-Level Estimates of Felony Disenfranchisement, 2016*, The Sentencing Project, 2016. <https://www.sentencingproject.org/app/uploads/2022/08/6-Million-Lost-Voters.pdf>

¹⁸⁶ Florida Senate Bill 7066 (“S.B. 7066”). <https://www.flsenate.gov/Session/Bill/2019/07066>

¹⁸⁷ Khushbu Shah, *After Florida’s ex-felons won the right to vote, Republicans are taking it away*, The Guardian, May 3, 2019, <https://www.theguardian.com/us-news/2019/may/03/after-floridas-ex-felons-won-the-right-to-vote-republicans-are-taking-it-away>

¹⁸⁸ *McCoy v. DeSantis*, No. 19-cv-304 (N.D. Fla. 2019) (Consolidated with *Jones v. DeSantis*, Consolidated Case No. 19-cv-300 (N.D. Fla. 2019); *McCoy, et al. v. DeSantis, et al.*, The Southern Poverty Law Center (Apr. 3, 2021), <https://www.splcenter.org/seeking-justice/case-docket/mccoy-et-al-v-desantis-et-al>.

¹⁸⁹ *Jones v. DeSantis*, 462 F. Supp. 3d 1196, 1250 (N.D. Fla. 2020).

¹⁹⁰ *Jones v. Governor of Fla.*, 975 F.3d 1016 (11th Cir. 2020).

¹⁹¹ Michael Morse, *The Future of Felon Disenfranchisement Reform: How Partisanship and Poverty Shape the Restoration of Voting Rights in Florida*, 109 CALIF. L. REV. 1143, at 46 (2021).



eligibility, including whether they owed certain fines and fees, and if so, how much.¹⁹² Most recently, a lawsuit challenging the implementation of SB 7066 has revealed the egregious effects this unwieldy system has had on returning citizens.¹⁹³

B. Criminalization of Voting

Undoing the results of democratic elections and undermining the will of the people has not been enough for those in power in the Deep South. Lawmakers have gone further to actively criminalize the act of voting, particularly for voters of color.

For example, in Florida in the 2022 legislative session, lawmakers passed SB524 creating an Office of Election Crimes and Security within Florida's Department of State to investigate and prosecute alleged crimes related to voting.¹⁹⁴ Since its creation, Florida's so-called "election crimes police force" has arrested and re-criminalized Floridians who were simply attempting to exercise the voting rights they believed were restored by Amendment 4 – in some cases because election officials told them so and provided a voter registration card.¹⁹⁵ The racial animus motivating both SB 7066 and the subsequent "election security" activities has also been laid bare: this new police force has primarily harassed Floridians of color; of the 19 high-profile arrests in August 2022, 15 were Black.¹⁹⁶

Georgia has had its own share of harassing, criminalizing, and attempting to intimidate voters of color. In 2012, a Black woman in Coffee County helped her nephew, a first-time voter, figure out how to use the voting machine. She was subjected to a three-year-long State Election Board investigation and ultimately, indicted on felony charges.¹⁹⁷ While the assistor was quickly acquitted by a jury, local elected officials have acknowledged that this very public prosecution has made Georgians reluctant to ask for or provide needed help. In 2014, then-Secretary of State Kemp launched a criminal investigation into a non-partisan, non-profit organization, the New

¹⁹² See, e.g. Rhonda Sonnenberg, *Florida Sets Up Formerly Incarcerated People to Vote – Then Arrests Them*, Southern Poverty Law Center, August 11, 2023. <https://www.splcenter.org/news/2023/08/11/florida-laws-criminalize-voting-returning-citizens>

¹⁹³ *Florida Rights Restoration Coalition v. DeSantis*, No. 23-cv-22688, Compl., at 6 (July 19, 2023) ("Since the Amendment was passed in 2018, the Defendants have created and perpetuated a bureaucratic morass that prevents people with prior felony convictions from voting, or even determining whether they are eligible to vote.").

¹⁹⁴ Fla. Stat. § 97.022.

¹⁹⁵ See Nicole Lewis and Alexandra Arriaga, *Florida's Voter Fraud Arrests Are Scarring Away Formerly Incarcerated Voters*, The Marshall Project, November 4, 2020. <https://www.themarshallproject.org/2022/11/04/florida-s-voter-fraud-arrests-are-scaring-away-formerly-incarcerated-voters>

¹⁹⁶ Wayne Washington, *Voter intimidation? Black voters over-represented among those arrested so far for election crimes*, The Palm Beach Post, October 10, 2022. <https://www.palmbeachpost.com/story/news/2022/10/10/black-voters-over-represented-among-those-arrested-election-crimes/10436294002/>

¹⁹⁷ Joel Anderson, *She Worked to Turn Georgia Blue and Got Arrested for It. Again*, Slate, November 16, 2020 <https://slate.com/news-and-politics/2020/11/georgia-black-voting-rights-olivia-pearson.html>



Georgia Project, after the voter engagement group registered 85,000 new voters.¹⁹⁸ Immediately after the historic turnout election of 2020, the State renewed similar criminal investigations, again targeting the New Georgia Project along with individual voters, many of whom are voters of color.¹⁹⁹

The bills and laws described above in Mississippi (SB2358)²⁰⁰ and Alabama (SB1)²⁰¹ also serve to chill both voters and assisters alike, and to cynically and unnecessarily criminalize the act of exercising one's fundamental right to vote.

C. Removing Democratically Elected Leaders

Deep South lawmakers have not stopped at denying people of color their voting rights. They are going further in recent years, stymying the democratic process altogether in specific communities with significant Black populations and other populations of color.

For example, in Alabama in 2022, a Black attorney won the Democratic nomination to serve on the bench in Alabama's 10th Judicial Circuit Court in Birmingham; there was no opposition in the general election, so she seemed likely to win the seat. Shortly after, Judge Clyde Jones announced his retirement from the seat, effective immediately, creating a vacancy. Hudson applied to the Jefferson County Judicial Commission to fill the vacancy. However, rather than place Hudson—the clear choice of the voters represented by the seat—in the role, the Alabama Judicial Resources Allocation Commission voted to relocate the judgeship out of diverse Birmingham to majority-white Madison County. The commission's vote to transfer the judgeship broke along racial lines, with all white members voting for the move and all the Black members voting against it. During a meeting before the commission's vote, members of the public overwhelmingly voiced their opposition to the move. Further, testimony at the meeting noted that the Legislature had the funds to create 20 new judgeships, which should have rendered a transfer from one county to another unnecessary. The SPLC and allies brought a case against this undemocratic move, in order to restore the seat—and the results of a democratic election—to the people of Birmingham, though the case was ultimately dismissed.²⁰²

In 2023, Mississippi passed HB1020, a notoriously anti-democratic law that created a separate, unelected court over parts of Jackson, Mississippi, the state's capital and an overwhelmingly

¹⁹⁸ Steve Benen, *Why was the New Georgia Project subpoenaed?* MSNBC, September 24, 2014.

<https://www.msnbc.com/rachel-maddow-show/why-was-the-new-georgia-project-subpoenaed-msna419696>

¹⁹⁹ Georgia Secretary of State. (2020, December 2). *Secretary Raffensperger Launches Investigation into Groups Encouraging Fraudulent Registrations*. <https://sos.ga.gov/news/secretary-raffensperger-launches-investigation-groups-encouraging-fraudulent-registrations>

²⁰⁰ Ballot Harvest; Ban, S.B. 2358 (Mississippi 2023). <https://legiscan.com/MS/text/SB2358/id/2642217>

²⁰¹ Absentee voting; prohibit assistance in preparation of; exceptions provided, S.B.1 (Alabama 2024).

<https://legiscan.com/AL/bill/SB1/2024>

²⁰² Complaint, *Hudson v. Ivey*, No. 03-CV-2022-900892.00 (Al. Cir. Ct. Montgomery County, July 19, 2022).

<https://www.splcenter.org/seeking-justice/case-docket/hudson-v-ivey>



Black city. The law allowed for court personnel, including judges and prosecuting attorneys, to be appointed by white, statewide officials rather than elected by the more than 80 percent of Jackson’s population who are Black Mississippians.²⁰³ Civil rights organizations and the U.S. Department of Justice sued Mississippi for its discriminatory and anti-democratic maneuvers; the DOJ stating that provisions of HB1020 “discriminate on the basis of race in violation of the U.S. Constitution by shifting authority over the county’s criminal justice system away from democratically-elected judges and prosecutors elected by Black voters.”²⁰⁴ In September 2023, the Mississippi Supreme Court ruled that the part of the law that allowed the white, conservative Chief Justice of that court to appoint four judges to the Hinds County Circuit Court was unconstitutional.²⁰⁵

Similarly, in Florida in August 2023, Governor DeSantis suspended democratically elected state attorney Monique Worrell, a Black woman and the state’s only Black female state attorney, over his opposition to her criminal legal reforms.²⁰⁶ Worrell’s reforms included measures supported by her constituents, such as curtailing the use of cash bail, expanding programs diverting children convicted of nonviolent offenses away from incarceration, and implementing procedures to prevent police misconduct. Worrell was elected with a supermajority of votes in November 2020, and until her suspension, Worrell represented the diverse voters of Orange and Osceola counties as State Attorney in the Ninth Judicial Circuit, Florida’s third largest judicial circuit. Governor DeSantis justified the suspension by citing “neglect of duty” and “incompetence,”²⁰⁷ but the facts in the Ninth Judicial Circuit—crime rates dropped by nearly 10 percent and murders dropped about 13 percent in 2021 compared to 2020, and in 2023 violent crime in Orlando was down 10 percent and shootings down 30 percent compared to 2022²⁰⁸—make clear that the suspension of this Black elected leader was otherwise motivated. In November 2023, SPLC filed a federal lawsuit claiming the suspension effectively disenfranchised nearly 400,000 voters who cast

²⁰³ Capitol Complex Improvement District judicial jurisdiction, H.B 1020 (Mississippi 2023). <https://legiscan.com/MS/bill/HB1020/2023>; Brower, M. (2023, April 24). *Mississippi Legislature Passes Bill Creating Unelected Court in Jackson*. Democracy Docket. <https://www.democracydocket.com/news-alerts/mississippi-legislature-passes-bill-creating-unelected-court-in-jackson/>

²⁰⁴ Office of Public Affairs (2023, July 12). *Justice Department Challenges Racially Discriminatory Provisions of New Mississippi Law Targeting Hinds County*. U.S. Department of Justice. <https://www.justice.gov/opa/pr/justice-department-challenges-racially-discriminatory-provisions-new-mississippi-law>

²⁰⁵ Emily Wagster Pettus, *Mississippi high court blocks appointment of some judges in majority-Black capital city and county*. AP news. September 21, 2023. <https://apnews.com/article/jackson-mississippi-courts-appointed-judges-5d5b81ba98c034e5be4d4e3d4a0e5b97>

²⁰⁶ Southern Poverty Law Center, *Governor Improperly Suspends Florida’s Only Black Female State Attorney*. October 6, 2023. <https://www.splcenter.org/news/2023/10/06/florida-governor-suspends-black-female-state-attorney>

²⁰⁷ Mary Ellen Klas, *State attorney is latest example of DeSantis’ use of power to suspend elected officials*. Tampa Bay Times, August 9, 2023. <https://www.tampabay.com/news/florida-politics/2023/08/09/state-attorney-is-latest-example-desantis-use-power-suspend-elected-officials/>

²⁰⁸ Florida Department of Law Enforcement (2021). *Statewide Judicial Circuit Offense Report January-December 2021*. https://www.fdle.state.fl.us/CJAB/UCR/UCR/2021/Annual/Judicial_Circuit_Offense_Report_2021A.aspx



ballots for Worrell and undermined the fundamental fairness and integrity of the electoral process.²⁰⁹

While a fully restored and strengthened Voting Rights Act may not protect against these particular subversions of the voting rights of people of color, the law—and the preclearance provision in particular—played an important deterrent role, warning actors with anti-democratic tendencies against going too far to achieve their ends. The blatant disregard for the will of their residents—and for democratic institutions and norms themselves—are coming from state legislators and executives emboldened by the absence of preclearance and by the failure of Congress to act to protect the rights of voters of color.

Appeals Courts Are Undermining Voting Rights Victories in Lower Courts

In the absence of the preclearance provision of the VRA—which protected communities of color from discriminatory laws and maps like those described above for nearly a half century—these communities and voting rights advocates have to go to court to attempt to vindicate the fundamental voting rights of Americans of color. These cases can only be filed after discriminatory laws and maps have taken effect and, often, after irreparable harms have occurred. What’s more, the cases are lengthy and extremely resource-intensive. It is not uncommon for multiple elections to take place with discriminatory policies and maps in place before voters’ rights are vindicated, if they are at all. In her 2024 testimony to the Senate Judiciary Committee, Sophia Lin Lakin of the American Civil Liberties Union cited 2 years as the average duration of the organization’s Section 2 cases.²¹⁰ And these cases are extraordinarily demanding and expensive—costing plaintiffs and taxpayers hundreds of thousands if not millions of dollars²¹¹—diverting critical resources and expertise from other democracy-advancing pursuits.

Costliness and duration aside, cases under Section 2 of the VRA and under the U.S. Constitution do sometimes result in the vindication of the voting rights of people of color, as described in some of the cases above.²¹² Federal district court judges are reviewing the facts of racial discrimination in voting practices and procedures—in the Deep South and elsewhere—and finding in favor of the plaintiffs.

²⁰⁹ *Caicedo, et al. v. DeSantis* (filed November 30, 2023). <https://www.splcenter.org/seeking-justice/case-docket/caicedo-et-al-v-desantis>

²¹⁰ The Right Side of History: Protecting Voting Rights in America Hearing before the U.S. Senate Committee on the Judiciary, 118th Congress (2024). <https://www.judiciary.senate.gov/committee-activity/hearings/the-right-side-of-history-protecting-voting-rights-in-america>

²¹¹ NAACP Legal Defense Fund (2018 August 13). *The Cost (in Time, Money, and Burden) of Section 2 of the Voting Rights Act Litigation*. https://www.naacpldf.org/wp-content/uploads/Section-2-costs-08.13.18_1.pdf

²¹² *Allen v. Milligan*, 599 U. S. 1 (2023). *Florida Rising v. Lee*, No. 4:21-cv-00201-AW-MJF (N.D. Fla. May 17, 2021).



However, all too often these days, these facts are being denied, and these victories are overturned in the appellate courts. Again and again, judges on the federal circuit court bench are overturning findings of discrimination from the district courts and allowing discriminatory laws and policies to continue harming voters of color and our democracy.

Nowhere is this more true than in the Deep South. The Eleventh Circuit, covering Florida, Georgia, and Alabama, and the Fifth Circuit, covering Mississippi and Louisiana (and Texas) have overturned district-level victories for voters again and again.

A. Fifth Circuit

In August 2023, a three-judge panel of the Fifth Circuit handed down a landmark ruling in a case brought by the SPLC aimed at ending the lifetime ban on voting for people convicted of certain crimes, calling the practice a violation of the Eight Amendment to the U.S. Constitution's prohibition on cruel and unusual punishment.²¹³ For well over a century, the law in Mississippi has permanently disenfranchised most people convicted of felonies, often for years after they had completed their sentences and were back home living in their communities. And because of the discriminatory nature of the criminal legal system in Mississippi and across the country, Black voting-age Mississippians were disenfranchised at over twice the rate of white voting-age Mississippians.²¹⁴ The district court recognized the suit's race-based equal protection argument in August 2019.²¹⁵ The discriminatory impact of this law should not be surprising, considering it was enshrined in Mississippi's 1890 constitution, a document specifically intended to prevent formerly enslaved people and their descendants from gaining political influence.²¹⁶

Then, in August 2023, a three-judge panel of the Fifth Circuit ruled that the policy is, in fact, cruel and unusual punishment under the Eighth Amendment.²¹⁷ While this was a tremendous victory and was originally upheld by a panel of the circuit court, less than two months later, the full Fifth Circuit agreed to rehear the case en banc and to put that victory on hold in the

²¹³ *Hopkins v. Sec'y of State Delbert Hosemann*, 76 F.4th 378 (5th Cir.), reh'g en banc granted, opinion vacated sub nom. *Hopkins v. Hosemann*, 83 F.4th 312 (5th Cir. 2023). In its original complaint, the SPLC also argued the law was a violation of the Fourteenth Amendment's Equal Protection Clause.

²¹⁴ *Id.*

²¹⁵ *Harness v. Hosemann*, No. 3:17-CV-791-DPJ-FKB (S.D. Miss. Aug. 7, 2019) (order).

https://www.splcenter.org/sites/default/files/documents/mssd-3_2018-cv-00188-00021.pdf

²¹⁶ *Mississippi Begins Analyzing its Racist Constitution of 1890*, *The New York Times*, December 12, 1985.

<https://www.nytimes.com/1985/12/12/us/mississippi-begins-analyzing-its-racist-constitution-of-1890.html>

²¹⁷ *Hopkins v. Hosemann*, 76 F.4th 378, 387 (5th Cir. 2023), vacated, 83 F.4th 312 (5th Cir. 2023).

<https://www.splcenter.org/sites/default/files/documents/hopkins-v-hosemann-opinion-us-court-appeals-fifth-circuit.pdf>



interim.²¹⁸ While we do not yet know how the full circuit will rule, we cannot take for granted the initial pro-voter ruling will hold.

B. Eleventh Circuit

In May 2020, a federal district judge in Florida ruled the Florida Governor and legislatures’ attempt to continue to disenfranchise voters post-Amendment 4 by requirement that returning citizens pay LFOs before they can vote, as described above, represented an “unconstitutional pay-to-play system.”²¹⁹ This was a victory for the returning citizens who had fought so hard for their voting rights, for the voters of Florida who passed Amendment 4 with a near supermajority, and for democracy. However, in September 2020, the Eleventh Circuit overturned this decision, ruling that the LFO requirement for reenfranchisement was not a poll tax,²²⁰ and in so doing permitting the ongoing disenfranchisement of tens of thousands of Floridians, including many Floridians of color.

As described above, Florida’s 2021 monster voter suppression omnibus, SB90, took aim at various methods of voting used by voters of color in the state. Accordingly, after a thorough review of the facts presented by plaintiffs, the district court judge found that the state “enacted some of SB 90’s provisions with the intent to discriminate against Black voters” and struck pieces of the law down as violations of the VRA and 14th and 15th Amendments.²²¹ Exceptionally, after noting that Florida has “repeatedly, recently, and persistently acted to deny Black Floridians access to the franchise,” the judge finds that “Under any metric, preclearance is needed,” and ordered Florida under preclearance coverage.²²² As a consequence of its repeated attempts to deny Black Floridians their voting rights, Florida would, for a period of ten years, have to receive preapproval of voting law changes from the DOJ or a federal court before enacting them.

However, the victory for voters of color was short-lived. Just two months after this major victory for voting rights, the Eleventh Circuit paused the district court’s decision pending appeal. In blocking the lower court’s decision, the Eleventh Circuit allowed the discriminatory provisions of SB90 to go into effect for the 2022 election. Subsequently, the Eleventh Circuit largely reversed the district court’s ruling, allowing almost all provisions of SB90 to stand indefinitely.²²³

In Georgia, district court judges have also issued rulings recognizing racial discrimination and protecting the rights of voters of color only to be overruled by the Eleventh Circuit. For example,

²¹⁸ *Hopkins v. Hosemann*, 83 F.4th 312 (5th Cir. 2023).

<https://www.splcenter.org/sites/default/files/documents/hopkins-v-hosemann-court-order-petition-rehearing.pdf>

²¹⁹ *Jones v. DeSantis*, 462 F.Supp. 3d 1196, 1203 (N.D. Fla. 2020). <https://www.democracymatters.com/wp-content/uploads/2021/10/420-2020-05-24-dct-opinion-on-merits.pdf>

²²⁰ *Jones v. Governor of Fla.*, 975 F.3d 1016, 1026 (11th Cir. 2020).

²²¹ *League of Women Voters of Florida v. Lee*, 595 F. Supp. 3d 1042 (N.D. Fla. Mar. 31, 2022).

https://www.splcenter.org/sites/default/files/documents/final_order_following_bench_trial.pdf

²²² *Id.*

²²³ *League of Women Voters of Fla. Inc. v. Fla. Sec’y of State*, 66 F.4th 905 (11th Cir. 2023).



in 2022, a federal district court judge ruled that Georgia's at-large method of electing commissioners for the Public Service Commission (PSC) diluted Black voting strength in violation of Section 2 of the VRA.²²⁴ The state appealed and moved for a stay of the decision pending appeal, which the Eleventh Circuit granted, effectively halting relief for Black voters in the 2022 election.²²⁵ The Eleventh Circuit then reversed the district court's decision in 2023, which has again prevented relief for Black voters in 2024.²²⁶ Georgia's Secretary of State recently decided to postpone the PSC elections yet again this year because the lawsuit is still pending.²²⁷ That means that the state has yet to hold elections for two commission seats currently held by white men whose terms expired at the end of 2022, including one commissioner appointed to fill the seat in 2021 who has never had to run for election as a result of the Eleventh Circuit's rulings denying justice to voters of color.

The Eleventh Circuit has also prevented Black voters from having the opportunity to elect candidates of their choice at the local level. Late last year, a district court judge found that the Cobb County School Board had likely racially gerrymandered district maps in violation of the 14th amendment to diminish the voting strength of voters of color and preserve a white majority on the board.²²⁸ The court ordered that the Georgia legislature draw new maps, which should have resulted in an additional district for voters of color to elect their candidate of choice in elections this year.²²⁹ Instead of voters of color having that opportunity, the Eleventh Circuit has prevented relief to voters of color by staying the district court's decision pending appeal, which leaves the racially gerrymandered maps in place for this year's election.²³⁰

Finally, while not immediately affecting voters of color in the Deep South, late last year a three-judge panel of the Eighth Circuit issued an outrageous ruling—that there is no private right of action in the VRA—that undermines long-standing precedent and takes the court out of step with several of the other circuits, which have affirmed the right of action.²³¹ Just as concerning and

²²⁴ *Rose v. Raffensperger*, 619 F. Supp. 3d 1241 (N.D. Ga. 2022), *rev'd sub nom. Rose v. Sec'y, State of Georgia*, 87 F.4th 469 (11th Cir. 2023).

²²⁵ *Rose v. Sec'y, State of Georgia*, No. 22-12593, 2022 WL 3572823 (11th Cir. Aug. 12, 2022), *vacated sub nom. Rose v. Raffensperger*, 143 S. Ct. 58, 213 L. Ed. 2d 1143 (2022).

²²⁶ *Rose v. Sec'y, State of Georgia*, 87 F.4th 469 (11th Cir. 2023).

²²⁷ Mark Niesse, *Georgia utility elections called off, leaving Republicans in office*, Atlanta Journal Constitution, Mar. 6, 2024, <https://www.ajc.com/politics/georgia-utility-elections-called-off-leaving-republicans-in-office/AQ35BHVVHNB1NFTGN6KSWGRS64/>

²²⁸ *Finn, et al. v. Cobb County*, No. 1:22-cv-02300-ELR, ECF No. 212 (N.D. Ga. Dec. 14, 2023).

<https://www.splcenter.org/sites/default/files/documents/order-finn-v-cobb-county-board-elections.pdf>

²²⁹ *Id.*

²³⁰ *Finn, et al. v. Cobb County*, No. 23-14186, ECF No. 29 (11th Cir. Jan. 19, 2024); Southern Poverty Law Center. (2024, January 22) *Cobb County Voters File Emergency Motion in Lawsuit Challenging Cobb County School Board Map*. <https://www.splcenter.org/presscenter/cobb-county-voters-file-emergency-motion-lawsuit-challenging-cobb-county-school-board>

²³¹ *Arkansas State Conference NAACP v. Arkansas Board of Apportionment*, No 22-1395 (11th Cir. 2023).

<http://media.ca8.uscourts.gov/opndir/23/11/221395P.pdf>



confounding, the full Eighth Circuit declined to rehear the case en banc, effectively disenfranchising untold voters of color in Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota, and South Dakota.

The SPLC recently won a favorable ruling related to the private right of action from a district judge in our case against Alabama’s state senate map.²³² However, either the Eleventh Circuit—following the Eighth Circuit’s lead—or the Supreme Court, when it eventually resolves the now circuit split on whether a private right of action exists within the VRA, could take that win away, and with it, the ability of voters of color to fight for their voting rights in court.

* * *

As this testimony has made clear, the attacks on the voting and representational rights of people of color in the Deep South are persistent and acute, to this very day. States across the Deep South have enacted law after law and map after map that take direct aim at the political power of Black, Latinx, Asian American, Native American, and other voters of color. A decade after the Supreme Court gutted the VRA and opened the floodgates to these assaults, the impact is abundantly clear: countless voter of color have had their voting rights denied, and as a result, the turnout gap between white voters and voters of color is large and growing.²³³

Congress Has the Power and the Mandate to Restore and Modernize the Voting Rights Act

While the problem was created by the Supreme Court, in its overturning of a regime that had protected the voting rights of people of color, especially in the Deep South, for nearly a half-century, the solution lies with Congress. Congress has the responsibility under the Fourteenth²³⁴ and Fifteenth Amendments²³⁵ to legislate to ensure equal protection and to protect the voting rights of people of color. And, for the last decade, it has the urgent mandate to pass new legislation that fully and effectively does so. However, Congress has failed to act to fulfill this responsibility and meet this mandate.

On behalf of voters of color in the Deep South, we urge Congress to act swiftly to combat race discrimination in elections and protect our voting rights. Specifically, we urge Congress to restore, strengthen, and modernize the Voting Rights Act of 1965 so that voters of color enjoy the full protections of one of the most successful civil rights laws of all times. Such legislation should restore the powerful prophylactic that is geographic preclearance to full robustness, by enacting a

²³² *Stone v. Allen*, 2:21-cv-01531 (N.D. Ala. 2024), <https://redistricting.ils.edu/case/stone-v-allen/>

²³³ *Supra* note 14.

²³⁴ U.S. Const. amend. XIV

²³⁵ U.S. Const. amend. XV



formula that covers states with a demonstrated record of ongoing and recent discrimination in voting practices and procedures and redistricting plans. Such legislation should also create a preclearance coverage plan for voting practices known to have a discriminatory effect, especially in jurisdictions with large populations of color. Legislation restoring the Voting Rights Act must also strengthen recourse for voters of color whose rights have been infringed upon, diluted, or denied even in the presence of strong preclearance provisions, so that voters may seek relief in the courts. Related, such legislation must unequivocally clarify the existing private right of action in the Voting Rights Act, since the presence of such has been questioned by some federal courts recently. It must also clarify that proximity to an election is not cause for failing to prevent or remedy voting law changes that would irreparably harm voters of color.

We appreciate the opportunity to submit this statement. For more information about SPLC's work protecting voting rights in the Deep South, please contact Laura Williamson, Senior Policy Advisor, Voting Rights at laura.williamson@splcenter.org. We stand ready to work with subcommittee members to address these critical issues.

Growing Racial Disparities in Voter Turnout, 2008–2022

By Kevin Morris and Coryn Grange MARCH 2024

Brennan Center for Justice at New York University School of Law

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Introduction

After the civil rights revolution of the 1960s, voter access increased and representation in government grew more equitable. Unfortunately, our research shows that for more than a decade, this trend has been reversing. This report uses data to which few previous researchers have had access to document the racial turnout gap in the 21st century.

The racial turnout gap — or the difference in the turnout rate between white and nonwhite voters — is a key way of measuring participation equality. We find that the gap has consistently grown since 2012 and is growing most quickly in parts of the country that were previously covered under Section 5 of the 1965 Voting Rights Act, which was suspended by the Supreme Court in its 2013 decision in *Shelby County v. Holder*.¹

Section 5 of the Voting Rights Act required jurisdictions with a history of racial discrimination in voting to “preclear” any changes to their voting policies and practices with the U.S. Department of Justice (or federal courts). In the Supreme Court’s *Shelby County* decision, Chief Justice John Roberts, writing for the majority, argued that Congress had not established that the formula used to determine the jurisdictions that would be subject to preclearance (found in Section 4b) was reflective of current political realities and that the formula was thus unconstitutional. While the Court agreed that the original coverage formula’s reliance (in part) on low turnout was justified in the 1960s and 1970s, the narrow majority concluded that contemporary turnout gaps should be used to assess current coverage under Section 4b. The Court relied heavily on turnout rates to substantiate its argument, writing that in the 2012 presidential election, “African-American voter turnout has come to exceed white voter turnout in five of the six States originally covered by §5.” But this interpretation of the data was far too narrow: the low turnout gaps in 2012 were likely due to Barack Obama’s presidential candidacy and did *not* demonstrate that preclearance was no longer needed.² That moment, on its own, was unrepresentative of the general pattern showing a sustained, and now growing, racial turnout gap.

In this report, we assess how the racial turnout gap has evolved in the decade since the Court’s decision. We find that while the gap is growing virtually everywhere, *Shelby County* had an independent causal impact in regions that were formerly covered under Section 5. By 2022, our primary models indicate that the white–Black turnout gap in these regions was about 5 percentage points greater than it would have been if the Voting Rights Act were still in full force, and the white–nonwhite gap was about 4 points higher. Put differently: the turnout gap grew almost *twice as quickly* in formerly covered jurisdictions as in

other parts of the country with similar demographic and socioeconomic profiles.

Recent scholarship finds that restrictive voting laws generally limit the turnout of voters of color the most.³ But while the research documents the effects of individual policies like polling place consolidation and voter identification laws, less is known about how the effects of these policies compound as more restrictions on voting are enacted.⁴ Moreover, many policies and practices that drive voting are not codified in state law. Take, for instance, voter list maintenance practices: following the *Shelby County* decision, jurisdictions that previously had been required to preclear any changes to voting with the federal government dramatically increased the rate at which they removed voters, even if state laws governing list maintenance did not change.⁵ We cannot identify and measure the impact of each individual change to voting policies and practices across the country, but the racial turnout gap necessarily takes account of *all* changes in voting policy, statutory or otherwise. Our unique data set, collected from nearly 1 billion vote records, allows us to conduct this analysis for the first time.

This report uses voter file snapshots from shortly after each of the past eight federal elections from Catalist and L2 to estimate turnout rates by race. Catalist and L2 are respected firms that sell voter file data to campaigns, advocacy groups, and academic institutions. Our conclusions based on this body of information about individual-level turnout behavior far surpasses what previous researchers have been able to establish working from limited survey data. We show that the racial turnout gap has grown everywhere. In all regions, the gap in the 2022 midterms was larger than in any midterm since at least 2006. In 2022, white Americans voted at higher rates than nonwhite Americans in every single state besides Hawaii. Moreover, the turnout gap cannot be entirely explained by socioeconomic differences — in income or education level — between Americans of different races and ethnicities.

That gap costs American democracy millions of ballots that go uncast by eligible voters. It also has significant consequences for political candidates and their campaigns. In 2020, if the gap had not existed, 9 million more ballots would have been cast — far more than the 7 million by which Joe Biden won the national popular

vote. In 32 states, the number of “uncast” ballots due to the turnout gap was larger than the winning presidential candidate’s margin of votes.⁶ That’s not to say that the racial turnout gap necessarily changed electoral outcomes in any given state, but the immensity of this figure does put the magnitude of the turnout gap into greater perspective. The gap matters for our political system.

Given that the racial turnout gap is growing around the country, including in regions that weren’t covered by Section 5, *Shelby County*’s impact is not immediately clear. The widening of the gap nationally can’t be directly attributed to the Supreme Court’s decision, though the Court perhaps emboldened jurisdictions that were not subject to preclearance to enact new restrictive policies.⁷ However, the turnout gap — especially the white–Black

turnout gap — is growing more quickly in counties that were formerly subject to Section 5 than in other, comparable parts of the country. A variety of statistical approaches support the conclusion that this more rapid growth in the turnout gap is attributable to the Supreme Court’s decision in *Shelby County*.

In addition, the effect of *Shelby County* has been growing over time; the decision did not result in a one-time increase. Instead, the difference between formerly covered and other jurisdictions was larger in 2022 than in any election since the decision was handed down. Meanwhile, with the federal government unable to protect the political rights of people of color using the full power of the Voting Rights Act, the laws and practices that would have been subject to preclearance continue to accumulate.⁸

I. Methodology

To calculate turnout rates in this report, we rely on data from the registered voter files. Current academic scholarship indicates that the voter file data from states with self-reported racial identification is superior to the data collected by the Current Population Survey, which has been used in much of the existing research on the racial turnout gap and actually understates the magnitude of the turnout gap.⁹ Even the best political opinion surveys are often biased when it comes to self-reported turnout — some respondents falsely report that they voted, and others misremember whether they participated, leading to incorrect estimates of turnout.¹⁰

Voter files, on the other hand, are government administrative records of who participated and are free of response or sampling bias. While other academic surveys like the Cooperative Election Study have begun validating respondents' reported turnout history in recent years, the voter files offer an unparalleled look at the U.S. electorate.¹¹

routine administrative list maintenance. Neither of these issues is likely to impact turnout rates estimated from the voter file. These records indicate whether each person actually cast a ballot. What's more, voters who participate in an election are unlikely to be removed from the rolls as part of systematic voter list maintenance the following spring, when our snapshots were collected: states generally remove individuals due to nonparticipation.¹⁵

Voter File Data

All told, we analyze nearly 1 billion voter file records.¹² This study is, to the best of our knowledge, the first to use such a large set of registered voter files to estimate turnout rates. Specifically, we analyze snapshots of the registered voter file from every state from the past eight federal elections. Each snapshot includes a record of every voter registered in the state at that time. These snapshots were each collected shortly after the election in question, offering an accurate picture of participants in each of the elections.¹³ For the 2008–2012 elections, we rely on snapshots provided by Catalist; for the 2014–2022 elections, we use records from L2. There is no reason that obtaining data from different vendors would impact any results we present in the body of this report. One potential concern could arise from different racial predictions from the vendors, but in no case do we rely on proprietary racial categorization. Instead, in all years and from both vendors, we rely solely on either self-reported racial data or on consistent, open-source methodologies discussed below.¹⁴

We refrain from analyzing *registration* rates calculated from the voter files. Such files contain some amount of deadwood — that is, voters who are registered but no longer eligible to vote (perhaps because they have moved or passed away). If racial groups have different levels of deadwood, we would have biased registration rates. Moreover, states conduct voter list maintenance (the removal of ineligible voters) at different times. Comparing the total number of registrants in two states in the spring of an odd-numbered year might be less an indication of underlying registration rates than of the timing of this

Voters' Race and Racial Turnout Rates

Most states do not include self-reported racial identification in their voter files.¹⁶ For these states, we use Bayesian Improved Surname Geocoding (BISG), an approach that incorporates two different data sources to predict each voter's race.¹⁷ The first is the racial composition of a voter's neighborhood, in this case census block groups. The second is the racial distribution of surnames from the Census Bureau. Every 10 years, the Census Bureau publishes data on the racial identifications of Americans with different surnames. For instance, in the 2010 census, 92 percent of respondents with the last name Martinez identified as Latino, and 89 percent of respondents with the last name Wood identified as white. Using both data sources, BISG estimates the likelihood that a voter is Black, white, Latino, Asian, or "some other race."¹⁸ BISG is widely used among academic researchers and has been accepted by courts as a valid basis for evaluating a number of concepts, including the presence of racially polarized voting.¹⁹

Throughout this report, we slightly modify the canonical version of BISG, which uses the racial characteristics of the total population (from the decennial census) of a voter's block group.²⁰ We use geographic population characteristics to estimate the characteristics of voters; thus, the more similar the geographic population we use is to the pool of registered voters, the better we can predict race. The total population can skew estimates where it is

different from the citizen voting-age population (CVAP) — for instance, in areas with large noncitizen immigrant populations. We therefore use the CVAP from the five-year American Community Survey (ACS) estimate ending with each election year as our target population for the BISG analyses. In the technical appendix accompanying this report, we show that using CVAP results in better estimates (in states with self-reported race) and that our primary results hold when using total or total adult population.

We calculate turnout rates by dividing the number of ballots cast by members of each racial group by the CVAP from the ACS five-year estimates ending in each election year.²² The Census Bureau publishes CVAP at the block-group level, a low geographic level that roughly corresponds to neighborhoods. (The median block group had a population of 1,248 in 2021.)²² In conjunction with the geocoded voter file, we produce detailed turnout estimates for very low geographic units across the nation.²³ We also aggregate up to higher geographic levels like counties and states.

Calculating turnout as the share of citizens of voting age in each racial group who participate — and not as the share of registered voters in each group — follows the definition provided by Bernard Fraga in his book, *The Turnout Gap*.²⁴ We calculate the turnout gap in the same way, by subtracting the turnout rate of each group from the turnout rate of white Americans.

Adjusting the Turnout Gap

In addition to looking at the raw turnout gap, we also present results weighting the gap by the nonwhite share of the population in each state. This lets us determine how

much higher overall turnout would have been had nonwhite voters participated at the same rate as white voters and compare the gap's impact on statewide turnout across states with different racial characteristics. Such estimates rely on two measures. The first is the size of the racial turnout gap. The greater the distance between white and nonwhite turnout, the higher the weighted turnout gap. The second is the relative size of the nonwhite population in a given jurisdiction. Those where the population is less white will have a higher weighted turnout gap. Weighting the turnout gap allows us to compare the impact of the gap on statewide turnout in different sorts of states.

We do not mean to imply that large racial turnout gaps do not matter where minority populations are small. For example, Native American turnout rates are lower than those of other groups, a result of centuries of racially discriminatory policymaking.²⁵ However, the Native American population in most states is not large enough to depress overall statewide turnout. Different measures are clearly needed to capture the participatory implications of large turnout gaps on small populations. Despite this limitation, however, weighting the turnout gap offers a way of identifying the states where racial turnout gaps are meaningfully depressing overall turnout numbers.

We weight a jurisdiction's turnout gap by estimating the jurisdiction's racial turnout gap and multiplying it by the nonwhite share of the population. Consider, for example, a hypothetical state where white turnout is 60 percent, nonwhite turnout is 50 percent, and 20 percent of the CVAP is nonwhite. The turnout gap is 10 percentage points (60 percent – 50 percent), and the weighted gap is 2 percentage points (10 percentage point turnout gap \times 20 percent nonwhite population share). In other words, statewide turnout in this state would have been 2 percentage points higher in the absence of the turnout gap.

II. Participation Rate Differences Across Time

In the analyses that follow, we examine how turnout rates and gaps have evolved since 2008. Data of this kind is not available prior to 2008, making that the earliest year for which voter file snapshots can be used on a nationwide scale. While the Obama presidency probably reduced racial turnout gaps early in our study period, our results indicate that the gap has widened ever since 2014, when a nonwhite presidential candidate was not temporarily reducing these disparities.

General Turnout Gap

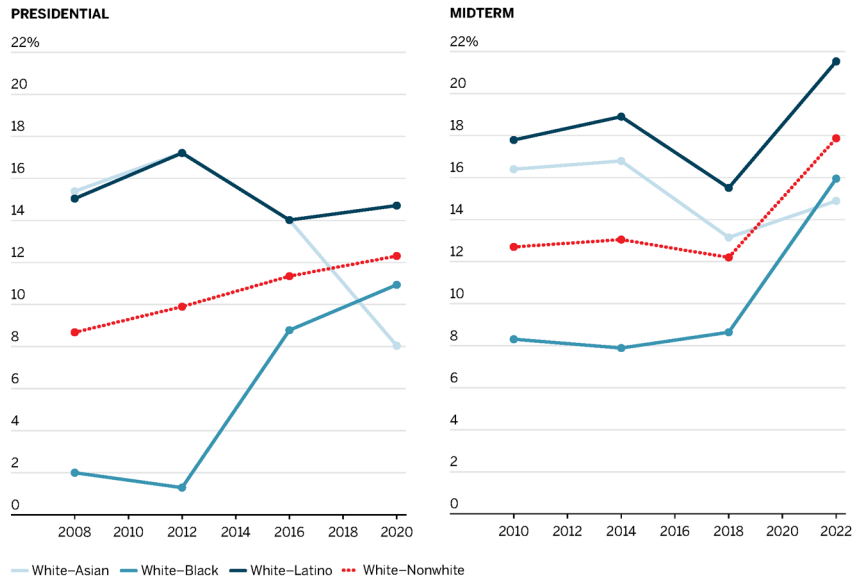
Figure 1 plots the national turnout rates among Asian, Black, Latino, and white voters — the ethnic/racial groups for which BISG provides reliable estimates. As figure 1 makes clear, turnout for white and Black voters in the 2008 and 2012 elections, with Obama at the top of the ticket, reached near parity. While turnout rates for Asian

and Latino voters lagged white and Black voters, the overall white–nonwhite turnout gap was narrower during these years than in the decade that followed.

As we discussed above, the majority of the Court in *Shelby County* pointed to the narrow turnout gaps in the 2008 and 2012 presidential elections to argue against the continued necessity of Section 5 of the Voting Rights Act. Of course, political science research has long established

FIGURE 1

Racial Turnout Gap, 2008–2022



that Black voters participate at higher rates when Black candidates are on the ballot; this, as much as anything else, was the likely explanation for the near parity in those years.²⁶ Figure 1 makes clear just how narrow the Court's argument was. In the 2010 election, when Section 5 was still in full force, the white-Black turnout gap was 8 percentage points — four times the size of the gap in 2008. By pointing only to presidential elections with a Black candidate, it focused on elections where factors unrelated to voting rights (temporarily) reduced the racial turnout gap.

While turnout rates have collectively improved since 2012, white turnout has increased the most: from the 2012 to 2020 presidential elections, white turnout rose by 10 percentage points while overall nonwhite turnout went up by less than 8 points. Similarly, from the 2014 to 2022 midterm elections, white turnout rose by 13 points while nonwhite turnout increased by only 8 points. Much of the increase in the gap was concentrated in 2022, perhaps due to the highly contentious round of redistricting leading into that year's election. All told, the white-nonwhite turnout gap increased from 10 points to 12 points between 2012 and 2020.

The shifts in national turnout rates among different racial groups raise many questions. Black voters, for instance, are generally concentrated in the Northeast and the South, while Latino and Asian communities are larger on the West Coast. Are the differences in racial turnout rates just *regional* differences? Are voters on the West Coast less likely to participate overall, regardless of their race? Figures 2 and 3 plot the turnout rates for each racial group within each of the country's broadly defined regions: Northeast, South, Midwest, and West.²⁷

Figures 2 and 3 make clear that most of the racial turnout gap is not explained by regional differences. Within each region, white turnout exceeded that of other groups in every year apart from the 2008 and 2012 elections in the South, where Black turnout slightly exceeded white turnout.²⁸

Americans with less education, less money, and fewer resources are less likely to participate in elections.²⁹ The opportunity cost of participating can be higher for Americans with fewer resources.³⁰ Traveling to a polling place, for instance, is harder for people without access to a car; the time cost might be compounded for an individual required to take unpaid time off work to vote. Further, individuals juggling multiple jobs or child-care responsibilities, or who face other demands on their time, might forget to register to vote prior to the deadline. Policies that make it more difficult to vote fall hardest on the people with the fewest resources to dedicate to voting.

Economically disadvantaged voters might also abstain from participating because of alienation from government and a political system that in many ways fails to reflect their policy preferences.³¹ Regressive policies,

such as campaign finance rules that favor wealthy donors and corporate entities or aggressive partisan gerrymandering, send messages to voters that politicians do not care about their needs. As Soss and Jacobs observe, policies that do not address voters' pressing challenges can "foster atomized publics with little sense of what they have in common and at stake in politics and government."³² The same is true when voters think of the government as something that happens *to*, and not *with*, them. In some communities, for example, a constant and aggressive police presence teaches citizens that government is something imposed on them, not something that they can control.³³

As a result of centuries of racially discriminatory policymaking, including when only white people were permitted by law to vote or make policy, racial and ethnic minorities are over-represented in populations where economic and other social precarities are common.³⁴ Given that social disadvantages can undermine democratic participation, do socioeconomic factors explain the racial turnout gap? They do explain some of it: turnout in the bottom income quartile in 2022 was 32 percent, compared with 58 percent in the top income quartile. The bottom quartile was also considerably less white (the CVAP was 53 percent white compared with 72 percent white in the top quartile). But we find that there are turnout gaps between racial groups living in socioeconomically similar neighborhoods, which indicates that these characteristics can't entirely explain such gaps.

While the voter file does not include information about voters' economic status or education, ACS five-year estimates from the Census Bureau reveal the income and education characteristics of the neighborhoods in which they live. We break out turnout gaps by census tract in figures 4 and 5 to test whether neighborhood characteristics influence turnout.³⁵ We first plot the turnout gap for different races in neighborhoods based on the median household income, with the first quartile being the lowest-income neighborhoods and the fourth quartile being the highest.

Figure 4 makes immediately clear that the turnout gap is not driven simply by the fact that voters of color live in lower-income neighborhoods: a persistent turnout gap has grown steadily in each income quartile over the past decade. Outside the highest-income areas, the white-Black turnout gap closed prior to 2014, though it has subsequently grown. While white-nonwhite turnout rates approached parity in the early parts of the past decade among voters living in low-income neighborhoods, the same is not true in high-income neighborhoods, which have consistently had the largest turnout gaps. The white-nonwhite turnout gap exceeded 15 percentage points in 2022's midterm election among voters living in the highest-income parts of the country.³⁶

FIGURE 2

Presidential Election Turnout Rates by Race and Region, 2008–2020

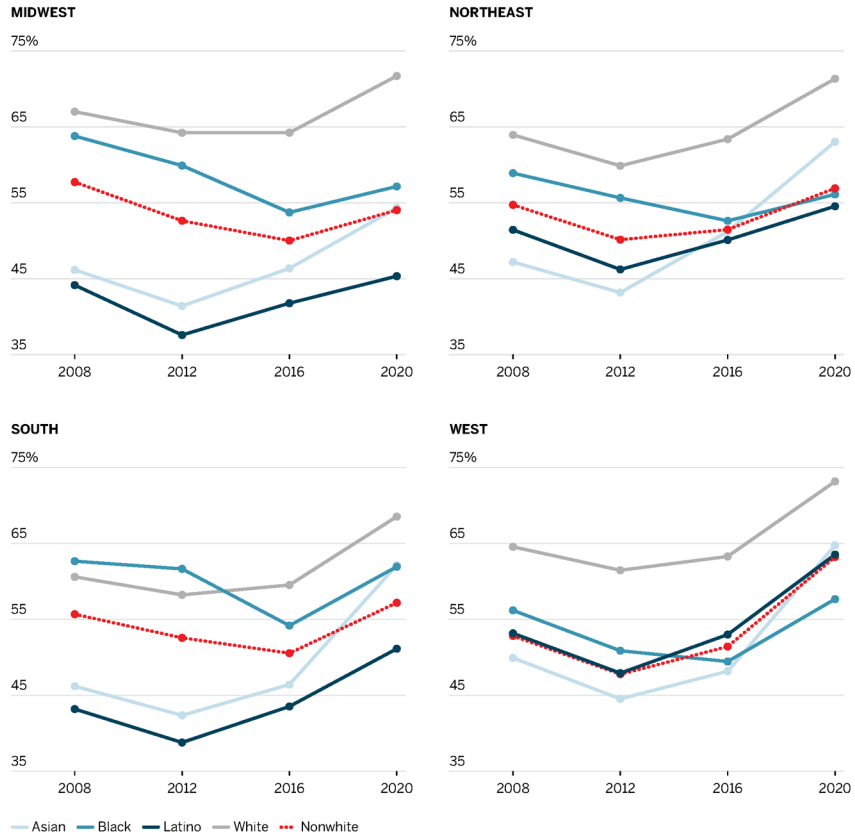


FIGURE 3

Midterm Election Turnout Rates by Race and Region, 2010–2022

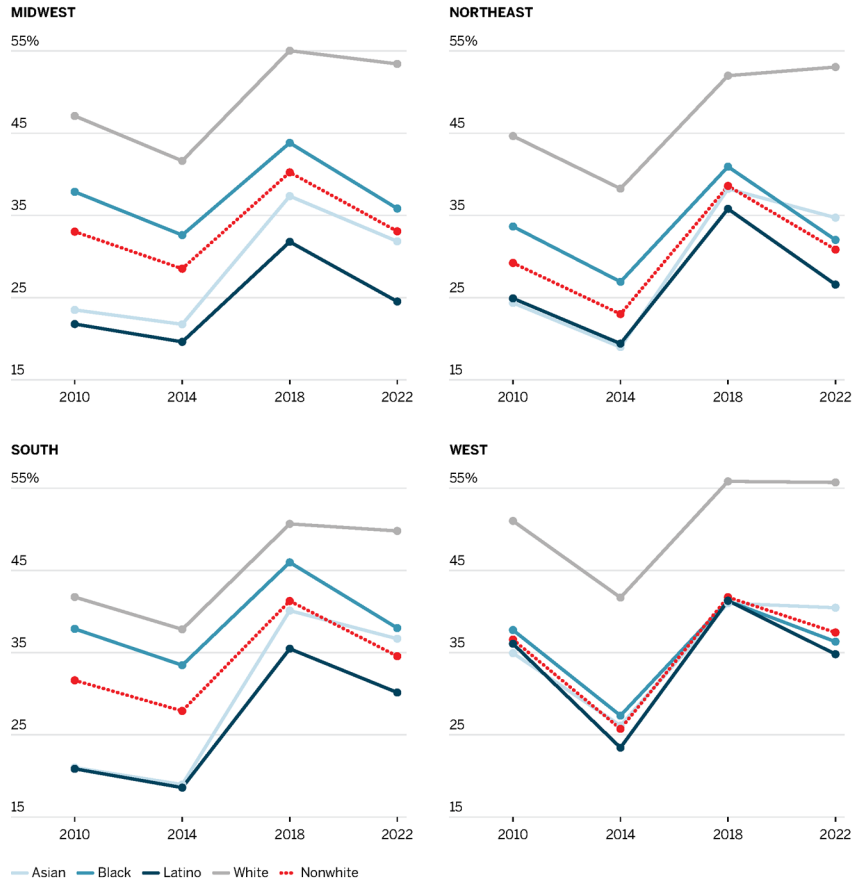
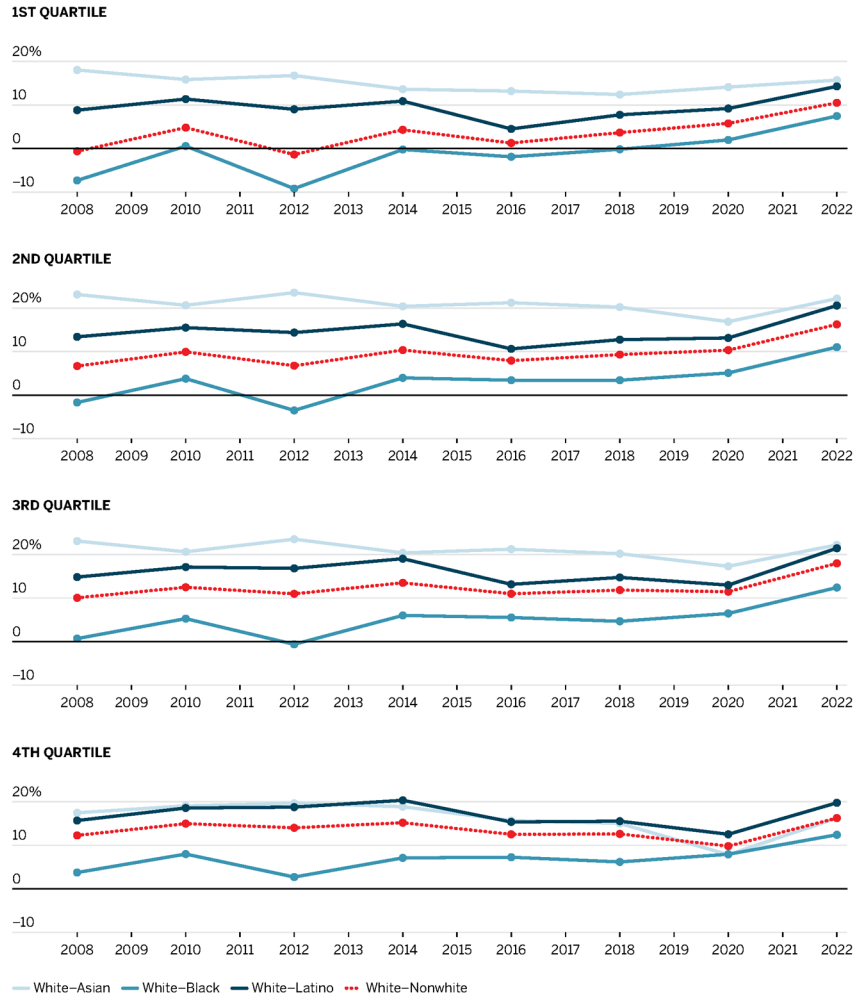


FIGURE 4

Racial Turnout Gap Across Income Quartiles, 2008–2022



The trends in the white–Asian turnout gap, broken out by income, tell a different story. As figure 1 shows, the overall white–Asian turnout gap narrowed from 14 points in 2016 to just 8 points in 2020. Figure 4 shows, however, that increased participation rates were largely concentrated among Asian voters living in high-income neighborhoods. For Asian Americans living in the lowest-income neighborhoods, the gap grew between 2016 and 2020.

Neighborhood estimates of education level similarly cannot fully explain the turnout gap, as seen in figure 5. When we split tracts into quartiles based on the proportion of the adult population that has at least a bachelor's degree, turnout gaps remain for all groups. Similar to the trends across income level, the white–nonwhite turnout gap is largest among voters living in the highest-educated neighborhoods. And, while the gaps may be smaller in lower-education neighborhoods, those are also the neighborhoods where the gap is growing most rapidly. Further, reductions in the white–Asian turnout gap are almost entirely concentrated among voters in the highest-educated neighborhoods. While the white–Asian gap is substantially larger than that of other racial and ethnic groups among voters living in all but the most educated areas, it has consistently been close to or smaller than the white–Latino gap in high-education neighborhoods.

Weighted Turnout Gaps

Figure 6 shows how the turnout gap impacted statewide turnout in the 2020 presidential (left-hand panel) and 2022 midterm (right-hand panel) elections. We break states out according to whether they were entirely, partially, or not covered by the preclearance condition of the Voting Rights Act prior to *Shelby County*. Nationally, turnout would have been 4 percentage points higher in 2020 and 6 percentage points higher in 2022 if nonwhite voters had participated at the same rate as white voters. These figures are particularly striking considering that turnout in these elections was at near-record highs; in fact, turnout in 2020 was the highest in at least a century. And yet, had voters of color participated at the same rates as white voters in 2020, 9.3 million more ballots would have been cast, and in 2022 that figure would have been 13.9 million. White turnout exceeded nonwhite turnout in every single state except Hawaii in 2022.

Figure 6 indicates that the weighted turnout gap was not uniformly distributed across states. It was largest in Alaska in 2020 and Florida in 2022. New Mexico and Texas had the second- and third-largest gap in both elections. These states are home to large nonwhite populations, so their presence at the top is unsurprising given that the relative size of the nonwhite population directly contributes to the influence of the racial turnout gap on overall participation rates. Another striking feature of this figure, however, is the concentration of high weighted gaps in states in the West; generally speaking, the impact of the racial turnout gap on statewide turnout was larger in states where Latinos make up a large share of the nonwhite population. This corresponds with results presented in the previous section: although Latino turnout rates were not markedly different in different regions, Latinos make up a larger share of the population in the West, exerting a larger influence on statewide turnout in those states.

Figure 6 also makes clear just how distinct the states formerly covered by Section 5 of the Voting Rights Act remain. The formerly covered states have large nonwhite populations and large turnout gaps, leading to some of the largest statewide turnout distortions in the nation. Put differently, a decade after *Shelby County*, the turnout gap continues to have a disproportionate impact in precisely the parts of the country that were once covered due to their histories of racially discriminatory voting practices.

Figures 7 and 8 break down the weighted turnout gaps in 2020 and 2022, respectively, based on which group formed the largest nonwhite racial or ethnic group in the state. The weighted gap is consistently highest in states where Latinos were the largest nonwhite group. Once again, the impact of the racial turnout gap on statewide participation rates is highest in the parts of the country that were covered under Section 5 of the Voting Rights Act. (In these charts, “other” includes all states where a group other than Black or Latino Americans is the single largest nonwhite group.)

Figure 9 shows how the weighted gap has evolved over the past 15 years. We break the trends out into four major regions. The figure indicates that the weighted gap has grown nearly everywhere, just as the raw racial turnout gap has. By way of reminder, the growth in the weighted gap is driven both by changes in the turnout gap and by changes in the nonwhite share of the population; if the turnout rate is constant but the nonwhite share of the population grows, the effect of the turnout gap on statewide turnout increases.

FIGURE 5

Racial Turnout Gap Across Education Quartiles, 2008–2022

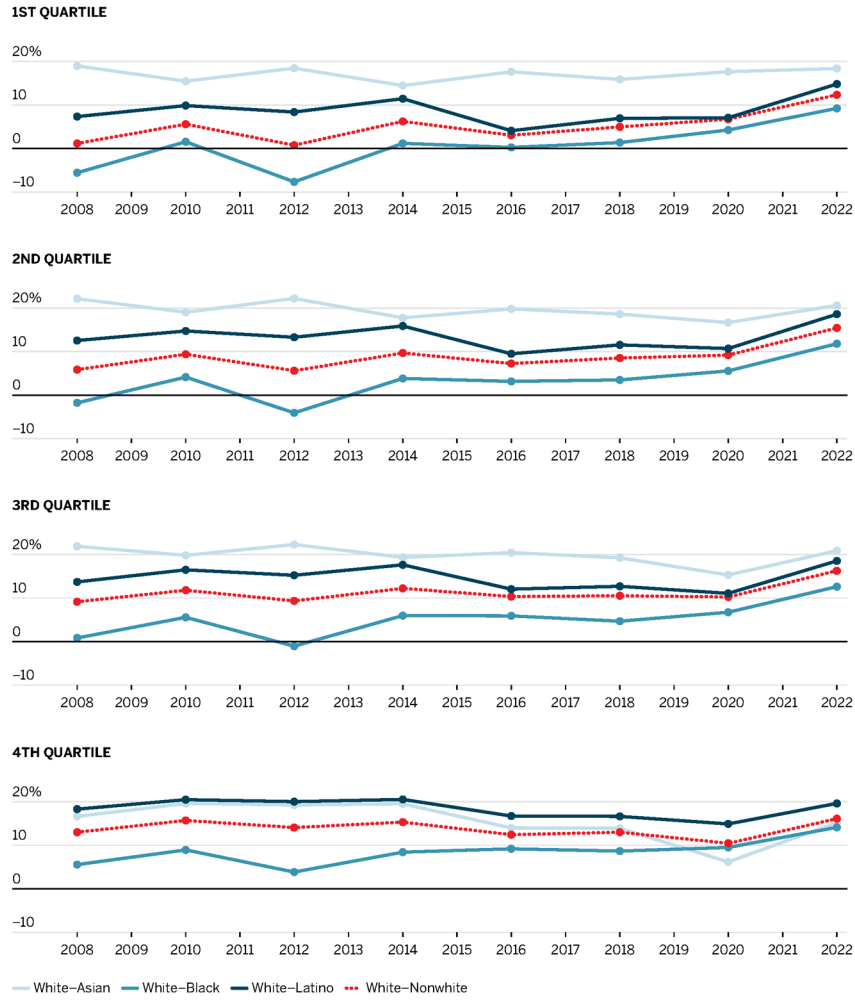


FIGURE 6

Weighted Turnout Gap, 2020–2022

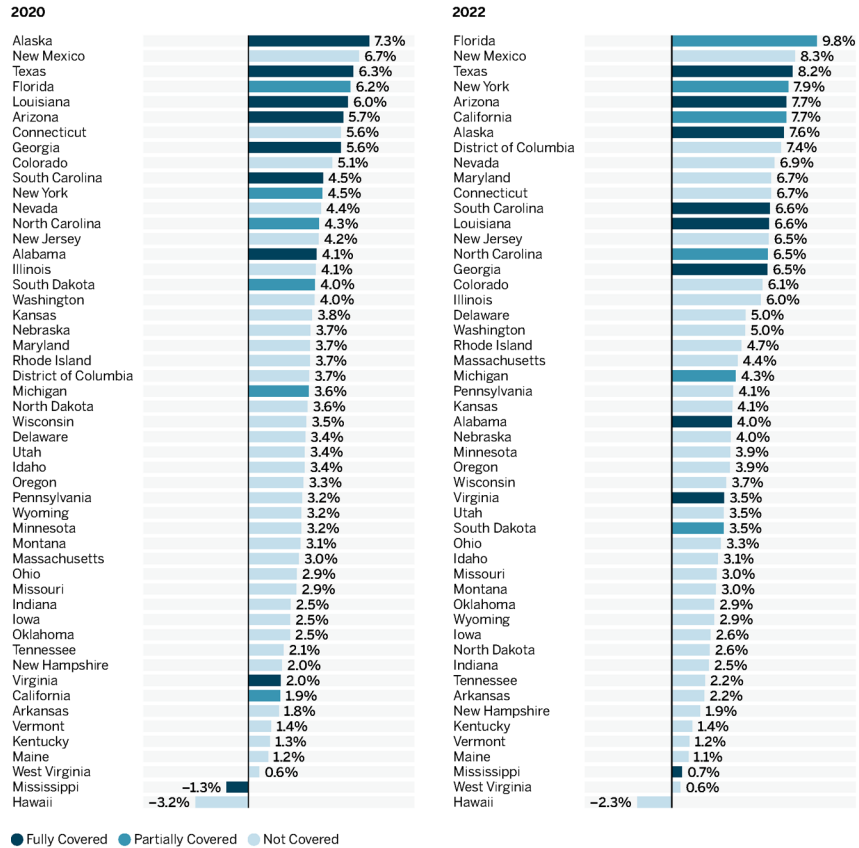


FIGURE 7

Weighted Turnout Gap by Largest Nonwhite Racial or Ethnic Group, 2020

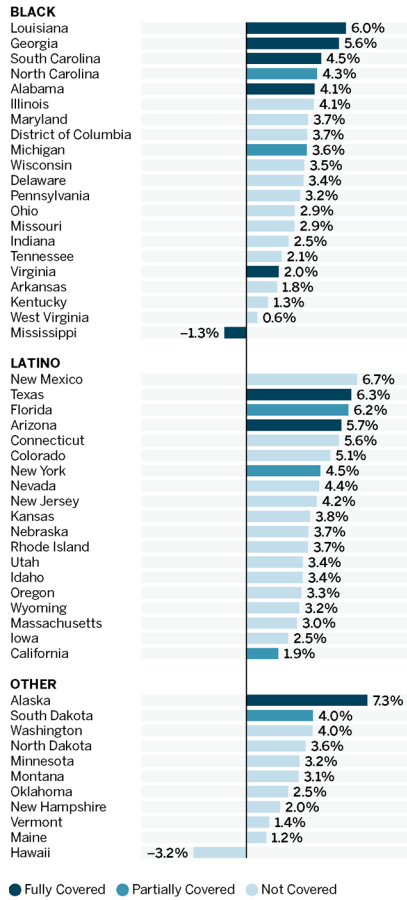


FIGURE 8

Weighted Turnout Gap by Largest Nonwhite Racial or Ethnic Group, 2022

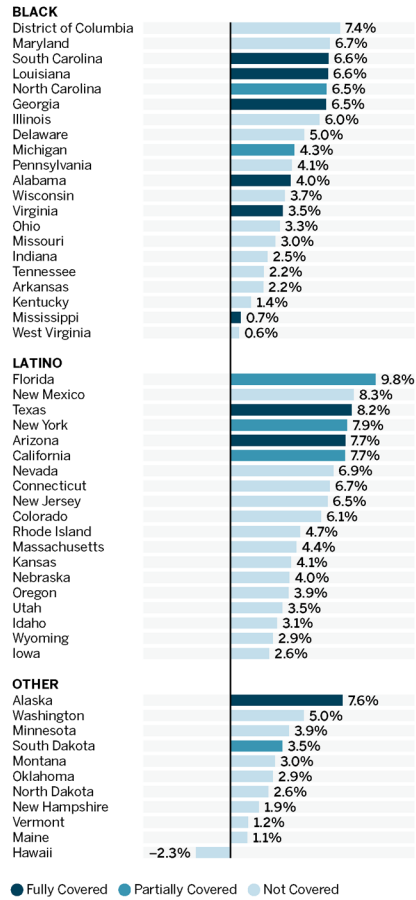
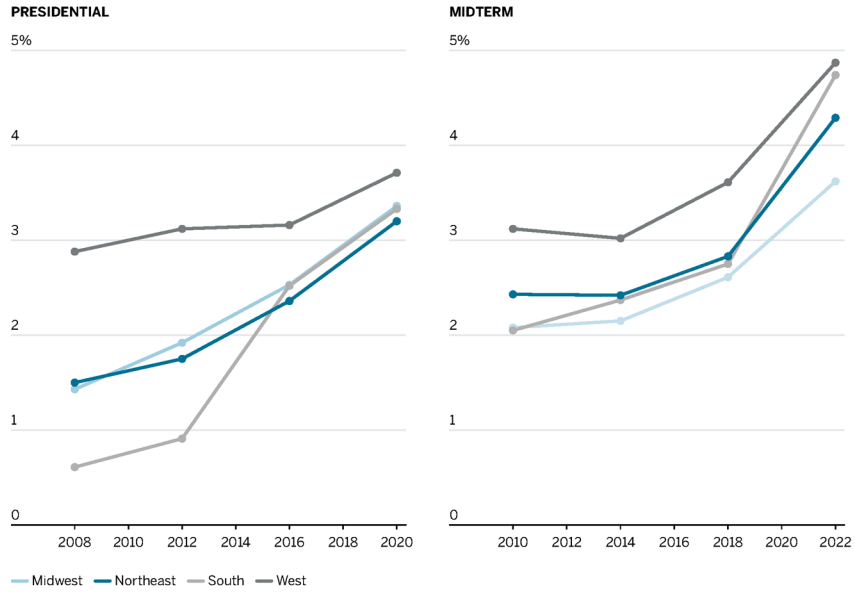


FIGURE 9

Weighted Turnout Gap by Region, 2008–2022



III. The Effects of *Shelby County v. Holder*

Prior to 2013, states and localities with a history of racial discrimination in their voting practices were required to clear any changes to their electoral policies before they could go into effect. Over the past decade, since the Supreme Court suspended preclearance, nearly 30 laws that make voting more difficult have gone into effect in states formerly covered under Section 5.³⁷

These formal changes in laws may be just the tip of the iceberg. County-level administrators have a great amount of discretion over how elections are run, deciding such things as the movement or even closure of polling places.³⁸ Such discretionary modifications are not reflected in changes to statewide voting law, but they would have been subject to preclearance in covered jurisdictions prior to the *Shelby County* decision.

Because jurisdictions are no longer required to report and submit these changes to the federal government for analysis of their potentially discriminatory effects, researchers have struggled to assess the total impact this Supreme Court decision has had on voters of color. By evaluating the decision's effects on the racial turnout gap, we are able to provide at least one measure that necessarily takes account of *all* changes in voting, whether statutory or otherwise. Our unique data set allows us to conduct this analysis for the first time.

As we showed in the previous sections, places formerly covered by Section 5 had the highest weighted turnout gaps in 2020 and 2022. But that doesn't necessarily prove that the elimination of the preclearance regime *caused* the gaps in these places to grow; it's possible that these places already had higher than average turnout gaps prior to 2013, for instance, or that the gaps in places with large Black populations would have increased the most over the past decade even if the preclearance system had continued.

To test the effect of the *Shelby County* decision more directly, we calculate the white–nonwhite and white–Black turnout gap for every county in the country for each election between 2008 and 2022.³⁹ But the counties formerly covered by Section 5 differed socioeconomically in important ways from the rest of the country.⁴⁰ They were, for instance, on average 16.7 percent Black, compared with just 3.4 percent for non-covered counties. Covered counties voted for Barack Obama at higher rates, and were also younger, than uncovered counties. Because of these differences, we might expect the turnout gap to evolve in formerly covered counties in the post-*Shelby County* period in distinct ways from the rest of the country. Take, for instance, the Black share of the population. Given our expectation that Obama's candidacy reduced the white–Black turnout gap, we would expect the turnout

gap to grow the most quickly in the post-Obama era in areas with large Black populations. Put differently, there might have been forces other than *Shelby County* disproportionately increasing the turnout gap in formerly covered jurisdictions.

To account for the differences between covered and non-covered counties, we use a tool called entropy balancing. This lets us weight the counties that were not covered so that they resemble the covered ones, based on 2012 (that is, pre-*Shelby County*) characteristics. For a much more detailed discussion of our methodology, a balance table, and various robustness checks, see the appendix.

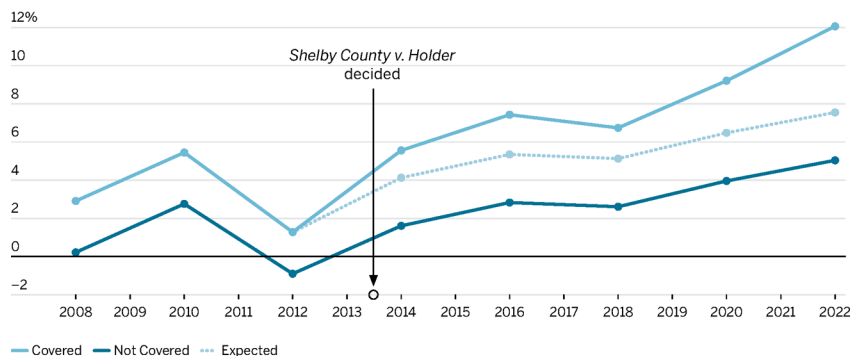
Figure 10 plots the trends in the white–Black turnout gap over time for counties covered under Section 5 and the (weighted) ones that were not. The white–Black gap before *Shelby County* was more than 3 points higher in covered counties than in counties that were not covered. By way of reminder, the Supreme Court wrote in *Shelby County* that the turnout gaps in formerly covered jurisdictions appeared to be in line with the rest of the country. While there was some truth to that point, it ignored the important socioeconomic differences between this region and the rest of the country. Figure 10 indicates that — after accounting for these differences — conditions in Section 5 jurisdictions were considerably worse than in the rest of the country even before *Shelby County*.

While the figure visually indicates that the turnout gaps might have grown more in places formerly covered by Section 5 than in others, *Shelby County* is clearly not the sole driver of the increasing turnout disparities. That's not necessarily surprising: as discussed above, new restrictive voting laws have gone into effect all around the country over the past decade, not only in formerly covered states, and this could be responsible for some of the upward trends in the gap.

However, the Supreme Court decision could be exacerbating underlying trends. To test this possibility, we use a “difference-in-differences” design.⁴¹ We begin from the assumption that the turnout gaps in covered and non-covered counties would have evolved in parallel if the Court hadn't invalidated Section 4b, net of controlling for other relevant characteristics. The plausibility of this assumption is bolstered by the fact that, as figure 10 shows, the gaps went up and down in virtual lockstep *prior* to 2013.

FIGURE 10

White–Black Turnout Gap Time Series



Note: Uncovered counties entropy balanced using the following covariates: population, share white, share Black, median income, median age, share with bachelor's degree or higher, and 2012 Obama vote share.

This doesn't mean that the gaps in the two sets of counties would have been the same; as figure 10 makes clear, the formerly covered counties had higher gaps even prior to *Shelby County* (once we weighted the other counties appropriately). If the post-*Shelby County* differences between covered and non-covered counties increased to a great enough extent, we could conclude that *Shelby County* had a causal impact on the turnout gap.

Our statistical models (which include county and year fixed effects) indicate that *Shelby County* caused a statistically significant increase in both the white–Black and the white–nonwhite turnout gaps. In the non-covered counties, the white–nonwhite and white–Black turnout gaps grew by 5 and 6 percentage points between 2012 and 2022, respectively; in the covered counties, however, the comparable figures were 9 and 11 points, respectively. In other words, by 2022, the white–nonwhite turnout gap grew about 4 points larger and the white–Black gap 5 points larger in the formerly covered counties than they would have if *Shelby County* hadn't been handed down. They grew at a substantially quicker pace than similar, non-covered counties. Over the post-treatment period as a whole, the average treatment effect on the treated counties was about 2 points, which is statistically significant at the 99 percent confidence level.

In addition to these *overall* effects, we also conclude that the effects of *Shelby County* were largest in exactly the sorts of counties we would expect. We start from the observation that *Shelby County* could have had different effects in different sorts of counties. Many counties were

fully covered under Section 5 of the Voting Rights Act; any changes to their local election practices needed to be precleared by the federal government. There were, however, other counties that were not covered by Section 5, but where the decision might still have had an impact: non-covered counties in states that were partially covered by Section 5. That's because the Supreme Court ruled in *Monterey County v. Lopez* that all *statewide* voting policies were subject to review if even a single county in the state was covered by Section 5.⁴² In Florida, for instance, only five counties were formally covered by preclearance. Nevertheless, Section 5 blocked the state's 2002 House district maps. These uncovered counties in partially covered states could therefore make local decisions without getting preclearance from the federal government, but state policies impacting the administration of elections in these counties were subject to such approval. Because *Shelby County* didn't impact these uncovered counties as much, we would expect the decision to have a muted effect in these places.

Table 1 indicates that the effect of *Shelby County* was indeed muted in counties that were not covered by Section 5 but were in partially covered states. In fact, the coefficients on State Covered \times Post *Shelby County* are not statistically significant in the white–nonwhite gap model. We do, however, find that *Shelby County* meaningfully increased the turnout gaps in counties where both state *and* local practices were subject to preclearance.

Our second extension deals with Section 5 objection letters from the years prior to *Shelby County*. Before

Section 4b was invalidated, localities would receive an “objection letter” from the federal government if a proposed change was not cleared under the preclearance condition. Put differently, these objection letters identified policies with racially disparate impacts and stopped them from going into effect. We would expect that *Shelby County* would have a larger effect in counties that tried to enact a racially regressive policy in the years when they were still covered under Section 5 of the Voting Rights Act. To avoid the possibility that objection letters are simply identifying the counties that were directly covered by Section 5, we do not include the uncovered counties in partially covered states in this analysis (these counties did not need to preclear changes and thus would not have received objection letters).

Table 2 indicates that this was the case. *Shelby County* did increase the white–nonwhite turnout gap even in

counties without an objection letter. But the gaps went up considerably more in the counties that did have an objection letter: by an additional 1.8 points (for the white–Black gap) and 1.6 points (for the white–nonwhite gap).

That the causal effect of *Shelby County* on the white–nonwhite turnout gap is significant only in the fully covered counties, and not in the uncovered counties in partially covered states, underscores the importance of local election administration for participation rates. So too does our finding that the gap increase was concentrated in counties that tried to implement discriminatory changes under Section 5. County-level coverage, not constraints on state-wide policy, appear to have been the drivers of post-*Shelby County* turnout gap increases.

In the appendix, we show that the finding that *Shelby County* increased the turnout gaps is robust to many robustness checks.

TABLE 1

Shelby County's Larger Impact in Counties Directly Covered by Section 5

	WHITE-NONWHITE	WHITE-BLACK
State Covered × Post <i>Shelby County</i>	-0.006 (0.004)	0.016* (0.007)
State and County Covered × Post <i>Shelby County</i>	0.032* (0.004)	0.011* (0.005)
County fixed effects	✓	✓
Year fixed effects	✓	✓
Num. obs.	24,278	18,027
R2	0.835	0.775
R2 adj.	0.811	0.743

* p < 0.05

Note: Treatment status in the base period accounted for by the county-level fixed effects. Standard errors clustered by county.

TABLE 2

Shelby County's Larger Impact in Counties with Objection Letters

	WHITE-NONWHITE	WHITE-BLACK
County Covered × Post <i>Shelby County</i>	0.018* (0.006)	0.012 (0.012)
County Covered with Objection Letter × Post <i>Shelby County</i>	0.016* (0.005)	0.018* (0.006)
County fixed effects	✓	✓
Year fixed effects	✓	✓
Num. obs.	20,926	15,235
R2	0.828	0.737
R2 adj.	0.803	0.699

* p < 0.05

Note: Treatment status in the base period accounted for by the county-level fixed effects. Standard errors clustered by county.

Conclusion

If the United States wants to make good on its foundational claims of a democratic system of governance open to all citizens, it must find ways to close the racial turnout gap. Wider now than at any point in at least the past 16 years, the gap costs millions of votes from Americans of color all around the country. Perhaps most worrisome of all, the gap is growing most quickly in parts of the country that were previously covered under the preclearance regime of the 1965 Voting Rights Act until the disastrous *Shelby County* ruling.

This report gives us a better look at the contours of the racial turnout gap than ever before and throws the severity of the problem into stark relief. We urge scholars to continue to study the myriad drivers of the turnout gap, from statewide policies to local election practices, from language barriers to disaffection from the criminal justice system; without a full understanding of the causes, we cannot develop solutions that will permanently ensure political representation for Americans of all races.

Importantly, as we've shown, socioeconomic factors can't fully explain the gap; the gap remains in high- and low-income neighborhoods alike. We do, however, prove

one of the causes of the increasing racial turnout gap: the Supreme Court's ruling in *Shelby County*. There is no doubt that the end of federal preclearance in regions with histories of racial discrimination increased the racial turnout gap. We argue that this is due to changes both in state policy and in local election practices. A fully functional Section 5 of the Voting Rights Act would improve conditions in areas where racial discrimination remains in voting policy. We urge Congress to pass the John R. Lewis Voting Rights Advancement Act to update and restore the preclearance regime for the 21st century.

Endnotes

- 1 *Shelby County v. Holder*, 570 U.S. 529 (2013).
- 2 Lawrence Bobo and Franklin D. Gilliam, "Race, Sociopolitical Participation, and Black Empowerment," *American Political Science Review* 84, no. 2 (1990): 377–93, <https://doi.org/10.2307/1963525>; and Ebonya Washington, "How Black Candidates Affect Voter Turnout," *Quarterly Journal of Economics* 121, no. 3 (2006): 973–98, <https://doi.org/10.1162/qjec.121.3.973>.
- 3 Anna Baringer, Michael C. Herron, and Daniel A. Smith, "Voting by Mail and Ballot Rejection: Lessons from Florida for Elections in the Age of the Coronavirus," *Election Law Journal: Rules, Politics, and Policy* 19, no. 3 (2020): 289–320, <https://doi.org/10.1089/eli.2020.0658>; Bernard L. Fraga and Michael G. Miller, "Who Do Voter ID Laws Keep from Voting?," *Journal of Politics* 84, no. 2 (2022): 1091–1105, <https://doi.org/10.1086/716282>; John Kuk, Zoltan Hajnal, and Nazita Lajevardi, "A Disproportionate Burden: Strict Voter Identification Laws and Minority Turnout," *Politics, Groups, and Identities* 10, no. 1 (2022): 126–34, <https://doi.org/10.1080/21565503.2020.1773280>; and Enrieta Shino, Mara Suttmann-Lea, and Daniel A. Smith, "Determinants of Rejected Mail Ballots in Georgia's 2018 General Election," *Political Research Quarterly* 75, no. 1 (2022): 231–43, <https://doi.org/10.1177/1065912921993537>.
- 4 Kevin Morris and Peter Miller, "Authority After the Tempest: Hurricane Michael and the 2018 Elections," *Journal of Politics* 85, no. 2 (2023): 405–20, <https://doi.org/10.1086/722772>; and Fraga and Miller, "Who Do Voter ID Laws Keep from Voting?"
- 5 Jonathan Brater et al., *Purges: A Growing Threat to the Right to Vote*, Brennan Center for Justice, 2018, <https://www.brennancenter.org/our-work/research-reports/purges-growing-threat-right-to-vote>.
- 6 David Wasserman et al., "2020 Popular Vote Tracker," Cook Political Report, 2020, <https://www.cookpolitical.com/2020-national-popular-vote-tracker>.
- 7 Further, by putting the burden on advocates to monitor changes in policy and bring Section 2 cases in all 50 states, the decision made it more likely that a change in a non-covered jurisdiction would go unnoticed or unchallenged. Section 2 prohibits any electoral practice that minimizes the voting strength of a racial or ethnic group.
- 8 J. Morgan Kousser and others have documented the central role that the federal government must play in promoting and safeguarding multiracial democracy in the United States. See J. Morgan Kousser, *Colorblind Injustice: Minority Voting Rights and the Undoing of the Second Reconstruction* (Chapel Hill, NC: University of North Carolina Press, 2000), <https://uncpress.org/book/9780807847381/colorblind-injustice>; and Jacob Grumbach, *Laboratories Against Democracy: How National Parties Transformed State Politics* (Princeton, NJ: Princeton University Press, 2022), <https://doi.org/10.2307/1.ctv2hbr28q>.
- 9 Stephen Ansolabehere, Bernard L. Fraga, and Brian F. Schaffner, "The Current Population Survey Voting and Registration Supplement Overstates Minority Turnout," *Journal of Politics* 84, no. 3 (2022): 1850–55, <https://doi.org/10.1086/717260>.
- 10 Ted Enamorado and Kosuke Imai, "Validating Self-Reported Turnout by Linking Public Opinion Surveys with Administrative Records," *Public Opinion Quarterly* 83, no. 4 (2019): 723–48, <https://doi.org/10.1093/poq/nfz051>.
- 11 These voter files do not indicate for whom someone voted; ballots are secret in the United States. Instead, they indicate whether someone voted and, in some states and years, how the ballot was cast (in person or via the mail).
- 12 The snapshots we leverage collectively have 1.5 billion records; this report, however, looks only at the individuals who voted in a particular federal general election.
- 13 In the technical appendix accompanying this report, we report the date of each snapshot. Though the voter files are the best available data, they are not perfect. Voter files are constantly in flux. For instance, it can take states a handful of months to record participation in the registered voter file. Moreover, states are constantly "cleaning" their voter files and removing ineligible voters. By the time a complete set of participants is included in the file, other voters may have died, moved away, or been removed from the file for another reason. Thus no 100 percent accurate voter file exists that captures all participants and includes all individuals registered as of a given election. See Seo-young Silvia Kim and Bernard Fraga, "When Do Voter Files Accurately Measure Turnout? How Transitory Voter File Snapshots Impact Research and Representation," *American Political Science Association, APSA Preprints, Version 1*, September 14, 2022, <https://doi.org/10.33774/apsa-2022-qr0gd>.
- 14 In many states, voters' state identification numbers are reported by both Catalyst and L2. Using the state ID number, along with voters' house number and ZIP code, we identify 94 million voters who did not move between the 2012 and 2014 elections. The correlation coefficients (an estimate of the "fit" of these data sets) on the predicted probability of being white, nonwhite, Black, or Latino are all 0.97 (it is 0.93 for probability of being Asian). Given that voters' racial estimates are updated each year as the racial composition of the citizen voting-age population in an assigned block group changes, we would expect a correlation coefficient approaching, but not exactly, 1. As such, we conclude that the files are highly comparable and that combining these files improves the power of our analyses and does not bias our results. In addition, the parallel trends assumption (that is, that the turnout gaps in covered and non-covered counties would have evolved in parallel if the Court hadn't invalidated Section 4b) means that changing data vendors does not bias our causal estimates of the effect of *Shelby County* on the turnout gap, so long as differences between vendors are unrelated to coverage status. Among this set of voters, the average change in the predicted probability of being white decreased by 0.5 percentage points for voters in covered and uncovered states alike between 2012 and 2014, indicating that our results are not being driven by the crossover from Catalyst to L2 in 2014.
- 15 According to the National Voter Registration Act, voters can be removed from the rolls only under specific circumstances if the state doesn't have personalized information indicating a change in eligibility. Generally, voters must fail to respond to a postcard and fail to participate in two federal election cycles before they can be removed. Thus, many individuals removed after a given election will be those who did not vote. For a detailed discussion of how list maintenance impacts voter file data, see Kim and Fraga, "When Do Voter Files Accurately Measure Turnout?"
- 16 The exceptions are Alabama, Florida, Georgia, Louisiana, North Carolina, and South Carolina.
- 17 Kosuke Imai and Kabir Khanna, "Improving Ecological Inference by Predicting Individual Ethnicity from Voter Registration Records," *Political Analysis* 24, no. 2 (2016): 263–72, <https://doi.org/10.1093/pan/mpw001>.
- 18 Following BISG's categorization, we consider Latino or Hispanic voters to be nonwhite in all cases. Throughout our analyses, we aggregate up the posterior probabilities rather than assigning voters a discrete race. Thus, if we had 10 voters who were each predicted to be Black with 40 percent certainty and white with 60 percent certainty, we would assume (in aggregate) that we had four Black and six white voters. Discrete assignment would assume that we had 10 white voters.

the most likely racial category for each of them. It is worth noting that the surname data provided by the Census Bureau and incorporated into the BISA algorithm does not report whether an individual is "some other race." Instead, the developers of the BISA algorithm combine the "Non-Hispanic American Indian and Alaska Native Alone" and "Non-Hispanic Two or More Races" to create the "some other race" category. Because the "other" category returned by BISA does not correspond exactly to "other" as defined in, e.g., the Census Bureau's CVAP data, at no point do we present turnout estimates of the "other" category. Wherever we present the overall nonwhite turnout rates (or the white–nonwhite gap), "nonwhite" is calculated by subtracting the estimated number of white ballots (or CVAP) from the total number of ballots (CVAP), thus sidestepping this issue.

19 Christian R. Grose, Expert Report of Christian R. Grose, Ph.D., La Union Del Pueblo Entero et al. v. Gregory W. Abbott et al., No. 5:21-CV-0844-XR (W.D. Tex. 2022); Loren Collingwood, Expert Report of Loren Collingwood, Ph.D., LULAC Texas et al. v. John Scott et al., No. 1:21-cv-786-XR (W.D. Tex. 2022); Jacob M. Grumbach and Alexander Sahn, "Race and Representation in Campaign Finance," *American Political Science Review* 114, no. 1 (2020): 206–21, <https://doi.org/10.1017/s0003055419000637>; and Kevin DeLuca and John A. Curiel, "Validating the Applicability of Bayesian Inference with Surname and Geocoding to Congressional Redistricting," *Political Analysis* 31, no. 3 (2023): 465–71, <https://doi.org/10.1017/pan.2022.14>.

20 Imai and Khanna, "Improving Ecological Inference."

21 The Census Bureau did not begin reporting CVAP numbers until 2009, and the 2022 numbers will not be available until early 2024. Therefore, the denominators for 2008 turnout are the five-year 2009 CVAP estimates, while those for 2022 turnout are the 2021 estimates.

22 U.S. Census Bureau, "American Community Survey 5-Year Data (2009–2022)," accessed July 24, 2023, <https://www.census.gov/data/developers/data-sets/acs-5year.html>.

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Maryland, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, and West Virginia. Midwest: Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, and Wisconsin. West: Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming.

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ABOUT THE BRENNAN CENTER'S DEMOCRACY PROGRAM

The Brennan Center's Democracy Program encourages broad citizen participation by promoting voting and campaign finance reform. We work to secure fair courts and to advance a First Amendment jurisprudence that puts the rights of citizens — not special interests — at the center of our democracy. We collaborate with grassroots groups, advocacy organizations, and government officials to eliminate the obstacles to an effective democracy.

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Why Do Nonwhite Georgia Voters Have To Wait In Line For Hours? : NPR

Why Do Nonwhite Georgia Voters Have To Wait In Line For Hours? Too Few Polling Places

OCTOBER 17, 2020 5:01 AM ET

FROM  gob
 Stephen Fowler


Some voters at Christian City Welcome Center in Union City, Ga., endured a five-hour wait during the state's June primary.

Dustin Chambers/Reuters

Kathy spotted the long line of voters as she pulled into the Christian City Welcome Center about 3:30 p.m., ready to cast her ballot in the June 9 primary election.

Hundreds of people were waiting in the heat and rain outside the lush, tree-lined complex in Union City, an Atlanta suburb with 22,400 residents, nearly 88% of them Black. She briefly considered not casting a ballot at all, but decided to stay.

By the time she got inside more than five hours later, the polls had officially closed and the electronic scanners were shut down. Poll workers told her she'd have to cast a provisional ballot, but they promised that her vote would be counted.

ProPublica is a nonprofit newsroom that investigates abuses of power. Sign up for ProPublica's User's Guide to Democracy, a series of personalized emails that help you understand the upcoming election, from who's on your ballot to how to cast your vote.

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"I'm now angry again, I'm frustrated again, and now I have an added emotion, which is anxiety," said Kathy, a human services worker, recalling her emotions at the time. She asked that her full name not be used because she fears repercussions from speaking out. "I'm wondering if my ballot is going to count."

By the time the last voter finally got inside the welcome center to cast a ballot, it was the next day, June 10.

The clogged polling locations in metro Atlanta reflect an underlying pattern: the number of places to vote has shrunk statewide, with little recourse. Although the reduction in polling places has taken place across racial lines, it has primarily caused long lines in nonwhite neighborhoods where voter registration has surged and more residents cast ballots in person on Election Day. The pruning of polling places started long before the pandemic, which has discouraged people from voting in person.

In Georgia, considered a battleground state for control of the White House and U.S. Senate, the difficulty of voting in Black communities like Union City could possibly tip the results on Nov. 3. With massive turnout expected, lines could be even longer than they were for the primary, despite a rise in mail-in voting and Georgians already turning out by the hundreds of thousands to cast ballots early.

Since the U.S. Supreme Court's *Shelby v. Holder* decision in 2013 eliminated key federal oversight of election decisions in states with histories of discrimination, Georgia's voter rolls have grown by nearly 2 million people, yet polling locations have been cut statewide by nearly 10%, according to an analysis of state and local records by Georgia Public Broadcasting and ProPublica. Much of the growth has been fueled by younger, nonwhite voters, especially in nine metro Atlanta counties, where four out of five new voters were nonwhite, according to the Georgia secretary of state's office.

The metro Atlanta area has been hit particularly hard. The nine counties — Fulton, Gwinnett, Forsyth, DeKalb, Cobb, Hall, Cherokee, Henry and Clayton — have nearly half of the state's active voters but only 38% of the polling places, according to the analysis.

As a result, the average number of voters packed into each polling location in those counties grew by nearly 40%, from about 2,600 in 2012 to more than 3,600 per polling place as of Oct. 9, the analysis shows. In addition, a last-minute push that opened more than 90 polling places just weeks before the November election has left many voters uncertain about where to vote or how long they might wait to cast a ballot.

The growth in registered voters has outstripped the number of available polling places in both predominantly white and Black neighborhoods. But the lines to vote have been longer in Black areas, because Black voters are more likely than whites to cast their ballots in person on Election Day and are more reluctant to vote by mail, according to U.S. census data and recent studies. Georgia Public Broadcasting/ProPublica found that about two-thirds of the polling places that had to stay open late for the June primary to accommodate waiting voters were in majority-

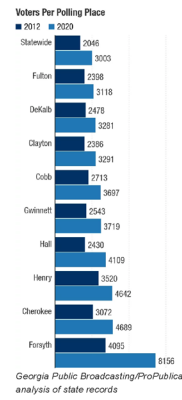
Packing The Polls

Voter registrations in nine counties in the metro Atlanta area have jumped sharply, but the number of polling places hasn't kept pace. As a result, those counties have many more voters assigned to each polling place than the state average.

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Black neighborhoods, even though they made up only about one-third of the state's polling places. An analysis by Stanford University political science professor Jonathan Rodden of the data collected by Georgia Public Broadcasting/ProPublica found that the average wait time after 7 p.m. across Georgia was 51 minutes in polling places that were 90% or more nonwhite, but only six minutes in polling places that were 90% white.



Georgia law sets a cap of 2,000 voters for a polling place that has experienced significant voter delays, but that limit is rarely, if ever, enforced. Our analysis found that, in both majority Black and majority white neighborhoods, about nine of every 10 precincts are assigned to polling places with more than 2,000 people.

A June 2020 analysis by the Brennan Center for Justice at New York University Law School found that the average number of voters assigned to a polling place has grown in the past five years in Georgia, Louisiana, Mississippi and South Carolina — all states with substantial Black populations that before the *Shelby* decision needed federal approval to close polling places under the Voting Rights Act. And though dozens of states have regulations on

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the size of voting precincts and polling places or the number of voting machines, the analysis found that many jurisdictions do not abide by them.

Georgia's state leadership and elections officials have largely ignored complaints about poll consolidations even as they tout record growth in voter registration. As secretary of state from 2010 to 2018, when most of Georgia's poll closures occurred, Brian Kemp, now the governor, took a laissez-faire attitude toward county-run election practices, save for a 2015 document that spelled out methods officials could use to shutter polling places to show "how the change can benefit voters and the public interest."

Kemp's office declined to comment Thursday on the letter or why poll closures went unchallenged by state officials. His spokesperson referred to his previous statements that he did not encourage officials to close polling places but merely offered guidance on how to follow the law.

The inaction has left Black voters in Georgia facing barriers reminiscent of Jim Crow laws, said Adrienne Jones, a political science professor at Morehouse College in Atlanta who has studied the impact of the landmark *Shelby* decision on Black voters.

Voter suppression "is happening with these voter impediments that are being imposed," Jones said.

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"You're closing down polling places so people have a more difficult time getting there. You're making vote-by-mail difficult or confusing. Now we're in court arguing about which ballots are going to be accepted, and it means that people have less trust in our state."

In August, on the 55th anniversary of the Voting Rights Act, the Democratic Party of Georgia, the Democratic Senatorial Campaign Committee and three Georgia voters sued the state and more than a dozen counties in federal court, alleging that some of the state's most populous areas have disenfranchised voters for more than a decade with long lines caused by inadequate staff, training, equipment and voting locations.

The suit, which was dismissed after the judge ruled the parties had no standing to file, warned of upheaval on Nov. 3, Election Day.

"As bad as the situation would be in normal circumstances, the burden is made far worse by the global pandemic," the lawsuit stated.

"Absent judicial intervention, Georgia is set for more of the same (and likely far worse than it has ever seen) in November."

Republican Brad Raffensperger, who took over as secretary of state in January 2019, has called for more resources and polling places, but he has been unable to push these changes through the GOP-controlled legislature.

Raffensperger's office blames Democrats and county elections officials for opposing his efforts to improve access. "As Secretary of State, Brad Raffensperger pushed legislation that would force counties to expand polling locations and directly address these issues," Deputy Secretary of State Jordan Fuchs said in an email.

"Unfortunately, every single Democratic Senator and Representative voted against this proposal saying that it would cause 'confusion.' Georgia voters deserve to know who is actually holding

back progress and it isn't the Secretary of State's Office."

Democrats and voting rights groups said they opposed the Raffensperger-backed bill because they believed it weakened state election supervision and made it harder for people to vote. The proposal shifted even more responsibility for elections from the state to counties, "without the necessary training, funding or support," Lauren Groh-Wargo, chief executive of Fair Fight, a voting rights group founded by former gubernatorial candidate Stacey Abrams, said at the time.

A History Of Discrimination

Georgia's history of voting violations stretches back more than a century, with poll taxes, literacy and citizenship tests, and intimidation that disenfranchised many Black citizens.

Under the Voting Rights Act of 1965, Georgia and eight other states with histories of discrimination were required to seek federal approval before making changes such as eliminating polling places in Black neighborhoods or shifting polling locations at the last minute. Dozens of counties and townships in six more states also had to seek approval.

Then in 2013, in a case brought by Shelby County, Ala., the U.S. Supreme Court threw out the method for determining which jurisdictions had to seek approval, saying it was unconstitutional because it was outdated. The court suggested that Congress could pass new

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guidelines, but lawmakers have been unable to reach agreement, leaving the pre-clearance requirement unenforceable.

Jones, the Morehouse professor, said the recent changes would clearly have required federal approval if not for the *Shelby* decision.

"All of these kinds of exercises ... would have had to be considered by the Department of Justice — or would not have been suggested because it would have been clear that the Department of Justice would have dinged them," she said. "And part of that has to do with the importance of Black voters, particularly in the Democratic Party."

Exacerbating *Shelby's* impact in Georgia was an explosion in voter registrations. Thanks in part to the state's "motor voter" law that updates records whenever a voter interacts with the Department of Driver Services, the state's voter rolls have swelled by a third since the 2012 presidential election. In two metro Atlanta counties, Gwinnett and Henry, the voting population shifted from majority white to majority nonwhite, contributing to Georgia's transition from red state to purple.



Hundreds of people wait in line for early voting earlier this week in Marietta, Ga. Eager voters have waited six hours or more in the former Republican stronghold of Cobb County, and lines have wrapped around buildings in solidly Democratic DeKalb County.

Ron Harris/Associated Press

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As the number of voters was swelling, county officials across the state began a steady stream of closures of polling locations.

By June 2020, Georgia voters had 331 fewer polling places than in November 2012, a 13% reduction. Because of added pressure from the coronavirus pandemic, metro Atlanta alone had lost 82 voting locations by the time June's primary rolled around. Nearly half of the state's 159 counties had closed at least one polling place since 2012.

Fulton County, which includes Atlanta, and DeKalb County realigned dozens of precincts after some municipalities were annexed or newly established. Other counties cited changes in voter behavior, or tight budgets, but the Georgia Public Broadcasting/ProPublica analysis found only nominal savings.

In Union City, about 20 minutes southwest of Atlanta in Fulton County, the number of active voters has grown about 60% since 2012.

Three polls were open for the June primary, with 9,000 voters assigned to the Christian City Welcome Center. Two additional polling places are being set up for Nov. 3, including one that will reduce the burden on the Welcome Center. Three others, however, will still have more than 5,000 voters each.

In a September county elections board meeting, Fulton officials said the goal had been to add more polling places in 2020 to accommodate population growth. The coronavirus pandemic

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resulted in closures or relocations, but most sites have been reopened.

Urban Congestion At The Polls

The influx of voters meant that already overburdened polling places got even busier.

Statewide, the number of voters served by the average polling place rose 47%, from 2,046 voters in 2012 to 3,003 as of Oct. 9, according to the analysis. Some rural counties have as many as 22,000 voters assigned to a single polling place.

Forsyth County, one of the fastest-growing counties in the nation, has grown its voter rolls by nearly 60% — or 60,000 voters — in the last eight years. Forsyth, a mostly white county about 45 minutes' drive north of Atlanta, now averages about 8,000 voters per polling place. Officials cut nine of its 25 polling places in 2013 and another after the 2016 election but added back five locations in 2019. No additional sites are expected to be opened for the November election.

Fulton County added nearly a quarter-million voters while consolidating voting locations. When the coronavirus struck, the last-minute unavailability of two polling places forced the assignment of 16,000 people to vote in June at Park Tavern, a restaurant/event space that reported 350 voters in line before the first vote was cast.

Six of Gwinnett County's seven most congested polling places serve predominantly nonwhite

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neighborhoods. In Lawrenceville, home to one of the largest Black populations in the county, a judge ordered polls at the Gwinnett County Department of Water Resources to stay open late during the primary for the nearly 7,000 voters assigned there. It was one of 16 polling locations with missing voting machines on the morning of the primary election.

Angela Maddox, a health care worker, cast her ballot there for the Aug. 11 primary runoff, when only local rather than statewide races were on the ballot. She said she was grateful that equipment was in place and low turnout meant no lines. The reports of voters waiting six hours or more in the primary were "disgusting," she said.

"I know it's a big problem and it seems to continuously happen in Black communities," she said. "That's where you tend to see a lot of the machines breaking down, or fewer machines, or any and everything to not count our vote, which is not fair."



Angela Maddox didn't have to wait to vote in a primary runoff in August in Gwinnett County. She says reports of voters waiting six hours or more in the primary were "disgusting."

Stephen Fowler/Georgia Public Broadcasting

Gwinnett County officials obtained federal approval in 2010 — before the *Shelby* decision — to reduce the number of polls from 163 to 156, citing cost savings and operational efficiency. Since then, the county has kept the same

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number of polling places while adding more than 175,000 active voters. The average polling place handled 3,649 voters in the June primary and is set for 3,719 for November.

Who's To Blame?

Since the *Shelby* decision, the Georgia State Election Board, chaired by Raffensperger, has been the primary body for investigating and potentially sanctioning counties found to have violated election laws and procedures.

But the election board has rarely investigated the sort of violations that the U.S. Department of Justice once stepped in to review under the Voting Rights Act.

Since 2010, when Kemp began his eight-year stint as secretary of state, the board has heard hundreds of cases, citing individuals for such violations as wearing political gear to the polls, and rebuking counties for mishandling voter registrations or absentee ballots. But it has taken no action to examine the poll closures that have been approved post-*Shelby* and has allowed a backlog of dozens of complaints to accumulate. In 2015, Kemp's office sent the letter to county elections officials that included advice on closing polling places.

In September, with Georgia in the national spotlight over its handling of elections, the board cleared a backlog of nearly 100 outstanding cases dating back to 2014 and referred several to the attorney general's office for further review. Among those was Fulton County's alleged mishandling of the June

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primary. The attorney general's office is still investigating.

In early October, the secretary of state's office told four counties — Fulton, DeKalb and Gwinnett in the metro Atlanta area and Chatham County in southeast Georgia — that had long lines, absentee ballot problems and late opening or closing polls in the primary to avoid a repeat by providing weekly updates on poll worker training, polling places and line management plans.

Besides the board's actions, the Georgia Senate considered a proposal filed in February and endorsed by Raffensperger. It would have required county elections supervisors to add more equipment or poll workers, or split up any precincts with more than 2,000 voters, if there was a wait longer than an hour measured at three points on Election Day.

More than 1,500 of Georgia's 2,655 precincts have at least 2,000 voters — many of them in urban Democratic counties — and Raffensperger said at the time that voters should never have to wait more than 30 minutes.

But the bill, SB 463, was opposed by Democratic lawmakers and voting rights groups, who argued that any revamping in an election year would cause confusion and create more ways to keep people from casting their ballot.

"Do you have any concerns about trying to change the rules of the game in the middle of an election cycle when we have so much litigation that is currently pending with respect to the

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state's handling of previous elections?" state Sen. Jen Jordan, a Democrat from Atlanta, asked during the floor debate.

The bill originated in the state Senate, which approved it. The proposal then went to a state House of Representatives committee, where Republicans substituted a version that didn't address the polling place issue and barred the secretary of state and county elections officials from sending absentee ballot applications to voters. Their redesign never reached a floor vote, eliminating any prospect of legislative changes in the 2020 session, which ended in June.

That same month, after the primary election, Raffensperger held a press conference in Fulton County outside Park Tavern, which had processed more voters than 96% of the state's polling places. Flanked by posters highlighting recent election woes, he urged local officials to add poll workers and voting locations while improving technical support and training.

"We know that we need a more diverse pool of voting locations to spread the load of voters that we are anticipating," Raffensperger said.

Nikema Williams, chair of Georgia's Democratic Party, said that while state officials took little or no action to stop widespread voting problems in nonwhite communities, local elections officials are also responsible, since they ultimately decide whether to close or open more voting sites.

"We added counties as a defendant in the [August] lawsuit because we want to make sure that we're getting this right," she said. "And at the end of the day, what matters to us is that voters are not negatively impacted at any level of the electoral process."



ELECTIONS
Georgia Voters Face Hours-Long Lines At Polls On First Day Of Early Voting



ELECTIONS
Map: Mail-In Voting Rules By State — And The Deadlines You Need



ELECTIONS
House Democrats' Campaign Committee Launches Blitz Targeting Black Voters

Although the judge chided Democratic officials for offering vague remedies and failing to provide sufficient evidence that long lines are likely in November, Phi Nguyen, litigation director for Asian Americans Advancing Justice-Atlanta, said there is plenty of evidence in plain sight.

Nguyen's organization has challenged a number of Georgia election laws in court, including the "exact match" policy that blocks voter registrations that do not exactly match a state or federal database. AAAJA also filed a lawsuit that forced Gwinnett County to change its process for rejecting absentee ballots.

She said the metro Atlanta counties' election administrators have not kept up with the wave of newer, more diverse voters, increasing the chances of disenfranchisement.

Nguyen was a poll monitor at the Infinite Energy Center arena for the primary and did not leave until the final votes were cast, well after polls closed at 7 p.m.

"Georgia made national news because of the breakdown in our election systems," she said. "Long lines are certainly an issue and they happen more often in under-resourced places, which tend to be where communities of color live."

Changes Before Election Day

Some counties in the metro Atlanta area have tried to increase polling locations before the November election.

Just weeks before Nov. 3, Fulton County approved 91 new polling places, focusing on areas where the lines were longest for the June primary. Fourteen polling places — including two of the four polling places in Union City —

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will still have more than 5,000 voters assigned, but that's a sharp drop from the 60 sites that had more than 5,000 voters assigned for the primary election, said Fulton County Elections Director Rick Barron.

"If you have fewer people assigned to a polling location, you have fewer people that are going to go to that location," he said. "We had some polling places in June where we had 9,000-17,000 voters assigned to these locations, so what this does is it spreads everyone out amongst many more locations."

The more than 16,000 primary voters who were assigned to Park Tavern are now split among five polling places, ranging from fewer than 1,500 voters to nearly 5,500. Park Tavern will remain a polling site, with about 4,300 voters.

But widespread rejiggering of polling locations just weeks before a presidential election comes with its own risks. A 2018 study of North Carolina voters from Stanford University found that relocating polling places decreases turnout, especially for younger voters.

For now, Fulton County officials are hoping for an 80% early voting rate to minimize voter confusion and other problems on Election Day, when the nation's eyes will once again be on Georgia. And they have doubled the election budget to \$34 million, purchasing two mobile voting buses as polling sites to alleviate early lines and launching a massive outreach campaign to change voter behavior.

There are more than 30 early voting locations, including a mega-voting site at Atlanta's professional basketball arena equipped with 60 check-in computers and 300 voting machines. On the first day of in-person early voting Monday, Oct. 12, officials recorded the second-highest single-day total in recent years. Statewide, a record 128,000 Georgians braved long lines that first day.



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Still, Kathy in Union City is worried that her vote won't be counted.

"When you look at the systemic issues that plague us as a society, oftentimes we're screaming but we're not being heard," she said. "Historically, we have seen that services and resources for Black communities have always been very inadequate, and this is just an extension of that. ... How could there be such a huge disparity?"

This article is part of Electionland, ProPublica's collaborative reporting project covering problems that prevent eligible voters from casting their ballots during the 2020 elections.

