

**STATEMENT OF KRISTEN CLARKE
PRESIDENT AND EXECUTIVE DIRECTOR
LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW**

**U.S. HOUSE COMMITTEE ON ADMINISTRATION
SUBCOMMITTEE ON ELECTIONS
HEARING ON
“VOTING RIGHTS AND ELECTION ADMINISTRATION IN AMERICA”**

OCTOBER 17, 2019



Chairwoman Fudge, Ranking Member Davis, and Members of the Subcommittee on Elections of the U.S House of Representatives Committee on House Administration, my name is Kristen Clarke and I serve as the President and Executive Director of the Lawyers' Committee for Civil Rights Under Law ("Lawyers' Committee"). As a former attorney at the U.S. Department of Justice, I handled countless cases under the Voting Rights Act, including matters that arose under Section 5, and presented argument for the court in the *Shelby County v. Holder* litigation. Thank you for the opportunity to testify today on voting rights and election administration in America; not only is this issue central to our democracy, but it is vital to ensuring equality and equal justice for African Americans, Latinos, and other people of color in this country.

The Lawyers' Committee for Civil Rights Under Law, the organization that I lead, has been at the forefront of the battle for equal rights since it was created in 1963 at the request of President John F. Kennedy to enlist the private bar's leadership and resources in combating racial discrimination. Simply put, our mission is to secure equal justice under the rule of law. For more than 56 years, the Lawyers' Committee has been at the forefront of many of the most important voting rights cases in the nation.

We spearheaded the National Commission on the Voting Rights Act, which made the largest contribution to the record supporting the 2006 reauthorization of the Act, and participated in the legal defense of the two cases challenging the constitutionality of the reauthorization. In 2014, we organized the National Commission on Voting Rights which issued a report documenting ongoing voting discrimination.¹ Since its creation 18 years ago, the Lawyers' Committee has also led Election Protection, the largest and longest-running non-partisan voter protection program in the U.S. And, to this day, the Lawyers' Committee's docket of significant voting rights litigation is among the most comprehensive and far-reaching—both geographically and in terms of the issues raised—as any in the nation.

Broadly, we are in a period of retrenchment against nearly all civil rights and liberties, but the threats to the right to vote challenge the very foundation of our democracy and our decades-long march towards equality. Voting is the right that is "preservative of all rights,"² because it empowers people to elect candidates of their choice, who will then govern and legislate to advance other rights. As voting rights were guaranteed under law and enforced by the federal government, the makeup of state and local legislatures, and Congress changed significantly, and legal protections have been increasingly expanded for marginalized groups—especially people of color. But, voting rights have always been contested in this country, with gains in turnout and representation by people of color often met with an inevitable backlash that sought to suppress our electoral power.³

In important ways, we are farther away from victory in this battle than we were less than a

¹ NATIONAL COMMISSION ON VOTING RIGHTS, PROTECTING MINORITY VOTERS: OUR WORK IS NOT DONE (2014), <http://votingrightstoday.org/ncvr/resources/discriminationreport>.

² *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886).

³ ARI BERMAN, GIVE US THE BALLOT: THE MODERN STRUGGLE FOR VOTING RIGHTS IN AMERICA (2015).



decade ago. Before 2013, we had the protections of Section 5 of the Voting Rights Act, which established a bulwark against state and local action in those states with a long and documented history of racial discrimination in voting. Under Section 5, covered jurisdictions—jurisdictions with a statutorily defined and demonstrated history of racial discrimination in voting—had to show federal authorities that a proposed voting change did not have a discriminatory purpose or the discriminatory effect of diminishing the ability of minority voters to vote or to elect their preferred candidates of choice. That protection is gone.

In *Shelby County v. Holder*, Chief Justice Roberts wrote that “things have changed dramatically” in the South since passage of the Voting Rights Act in 1965, and that “[b]latantly discriminatory evasions of federal decrees are rare.”⁴ Unfortunately, that has proven to be an overly optimistic view of the state of voting rights in this country.

Of course, some “things” have changed—we no longer have literacy tests or direct poll taxes, and people understand that discrimination is illegal and actionable. But, the “[b]latantly discriminatory evasions” of decades past have been replaced by subtler, but equally pernicious discrimination. At a time when the country is progressing towards becoming majority people of color,⁵ access to the franchise is under threat by both overt and covert voter suppression laws and tactics, (1) including making voter registration more difficult and restricting organizations from helping people register, (2) voter purges of eligible voters, (3) unduly restrictive photo ID laws, (4) polling place closures and polling place relocations to sites deemed hostile by voters of color, (5) ineffective language assistance for voters with limited English proficiency, (6) long lines at polling places due to insufficient staffing and poll locations, (7) improper handling of absentee ballots, (8) faulty technology, particularly in minority communities, that risks votes not being properly counted and exposes the machines to the risk of tampering, and (9) vote dilution that undermines the ability of people of color to elect candidates of their choice.

Prior to *Shelby*, covered jurisdictions had to provide notice to the federal government—which meant notice to the public—before they could implement changes in their voting practices or procedures. Such notice is of paramount importance, because the ways that the voting rights of minority citizens are jeopardized are often subtle. They range from the consolidation of polling places so as to make it less convenient for minority voters to vote, to the curtailing of early voting hours that makes it more difficult for low-income people of color to vote, to the disproportionate purging of minority voters from voting lists under the pretext of “list maintenance.” As Congressman John Lewis said after the *Shelby* decision was handed down, the Supreme Court “struck a dagger in the heart of the Voting Rights Act.”⁶

Nor do we have the protections of a Department of Justice committed to the core

⁴ *Shelby Cty., Ala. v. Holder*, 570 U.S. 529, 531 (2013).

⁵ William H. Frey, *The US will become ‘minority white’ in 2045, Census projects*, The Brookings Institution (Oct. 15, 2019, 1:22 PM), <https://www.brookings.edu/blog/the-avenue/2018/03/14/the-us-will-become-minority-white-in-2045-census-projects/>.

⁶ Press Release, Rep. John Lewis, Rep. John Lewis Calls Court Decision “A Dagger” in the Heart of Voting Access (June 25, 2013), <https://johnlewis.house.gov/media-center/press-releases/rep-john-lewis-calls-court-decision-dagger-heart-voting-access>.



constitutional mandate of equal justice under law for all. Before 2017, we had in the Department of Justice a partner in the fight for civil rights, and—importantly— one with the capacity and resources which civil rights organizations could not match. Today, the Department is not only sitting on the sidelines in this crucial battle, but it is also taking affirmative stands against positions that would further equal justice—positions it had previously fought for.

Although Section 2 of the Voting Rights Act remains a viable weapon in the fight against racial discrimination in voting, it is nowhere near as potent a weapon as was Section 5. Where Section 5 protected against discriminatory changes in voting, against an easily applied standard of whether minority voters would be worse off as a result of the change, Section 2 requires plaintiffs to bear the burden of complex and costly protracted litigation to show that an existing or newly instituted policy or practice is discriminatory. Where, under Section 5, the Department of Justice would necessarily bear the relatively modest costs of defending against the jurisdiction's claim that the change in voting practices was not retrogressive, Section 2 places those costs on resource-strapped private litigants.

Nevertheless, organizations like the Lawyers' Committee have continued to fight the fight, made even more essential by the vacuum left by the evisceration of Section 5 of the Voting Rights Act and the Department of Justice's decision to go AWOL from its historic role of protecting civil rights. Since *Shelby County*, the Lawyers' Committee has been involved in 41 cases relating to discriminatory practices in voting or adverse effects on the voting rights of minority voters, summarized in Appendices A and B to this testimony.

Twenty-four of these actions were filed since January 20, 2017—which is twenty-four more cases than instituted by the current administration's Department of Justice. Not including the four cases where we sued the federal government, in twenty-nine of the thirty-seven (78.3%) cases we have been opposed by state or local jurisdictions that were covered by Section 5, even though far less than half of the country was covered by Section 5. Importantly, we have achieved substantial success—measured by final judgment, advantageous settlement, or effective injunctive relief in three-quarters of these cases.

The voting rights cases we handle run the gamut of the voting process: from registration to the casting of the vote to ensuring that a minority voter's vote has an equal chance to be effective as that cast by a white voter. The breadth and scope of the cases we have handled in just the last few years highlights dramatically the problems still faced by voters from communities of color. These cases are but some of the Lawyers' Committee entire docket of cases from just over the past half-decade. Moreover, they represent even a smaller fraction of the many cases brought by our brother and sister organizations. I will note that mounting these litigation efforts have come at great expense and required significant diversion of resources.

In my testimony, I will outline the modern forms of voting discrimination—which can be subtle, but no less pernicious than first generation barriers to the ballot—through highlights of our active and substantial voting rights litigation. I will also provide an overview of Election Protection, which provides a front-line defense for voters against discrimination and election administration errors in real time, as the nation's largest and longest-running non-partisan voter protection program.



Obstacles to Voter Registration

There are significant obstacles to voter registration, some natural, some technological, and some man-made. In 2016, Chatham County, Georgia, was hard hit by Hurricane Matthew, just days before the close of voter registration. Chatham County has over 200,000 voting age citizens, of whom more than 40 percent are African American. Almost half of its residents lost electrical power during the storm, and the county had been subject to mandatory evacuation. Yet Governor Nathan Deal and then Secretary of State Brian Kemp refused to extend the deadline. We sought and obtained emergency relief extending the deadline to register, allowing over 1400 citizens, predominately African American and Latino to vote.⁷ That same year, we sought and obtained similar relief, extending the voter registration deadline, in Virginia, after its online voter registration system crashed. Over 28,000 voters were able to register as a result of the court order.⁸

With our partner civil rights organizations, we have also brought actions to enforce Sections 5 and 7 of the National Voter Registration Act's requirements that states make assistance to register to vote available to people who visit motor vehicle and public assistance agencies. One such case, against North Carolina, settled in 2018 with substantial improvements made at both state department of motor vehicles and social service agencies in how voter registration applications are offered and processed.⁹

In 2017, the Lawyers' Committee successfully challenged Georgia's runoff election voter registration scheme, which violated Section 8 of the National Voter Registration Act, because it required Georgians to register to vote approximately three months before a federal runoff election, while the NVRA set the deadline at 30 days.¹⁰

In addition to NVRA violations, a number of jurisdictions continue to impose a proof of citizenship requirement during voter registration, which not only weighs disproportionately and heavily on persons of color, but also violates federal law. The Lawyers' Committee has twice sued to stop such practices, first intervening on behalf of the Inter Tribal Council of Arizona, Inc. to successfully defeat an attempt by the states of Arizona and Kansas to modify the state-specific instructions of the federal mail voter registration form to require applicants residing in Kansas and Arizona to submit proof-of-citizenship documents in accordance with state law,¹¹ and, second, obtaining a preliminary injunction against a decision of the Election Assistance Commission's Executive Director to include a proof of citizenship requirement on federal form instructions used by Alabama, Georgia, and Kansas.¹²

⁷ *Georgia Coalition for the Peoples' Agenda, et al., v. John Nathan Deal, et al.* (S.D. Ga., No. 4:16-cv-0269-WTM-GRS, October 12, 2016).

⁸ *New Virginia Majority Education Fund, et al. v. Virginia Department of Elections, et al.*, No. 1:16-cv-01319 (E.D.Va. 2016), .

⁹ *Action NC, et al. v. Kim Westbrook Strach, et al.*, No. 1:15-cv-01063 (M.D.N.C. 2018).

¹⁰ *Georgia State Conference NAACP v. Georgia*, No. 1:17-CV-1397 (N.D. Ga. May 4, 2017).

¹¹ *Kobach v. U.S. Election Assistance Commission*, 772 F. 3d 1183 (10th Cir. 2015).

¹² *League of Women Voters of United States v. Newby*, 838 F.3d 1 (D.C. Cir. 2016).



Arizona created a two-tier voter registration process in the wake of the Supreme Court's decision in *ITCA v. Arizona*,¹³ a case the Lawyers' Committee successfully litigated, which held that Arizona's documentary proof of citizenship requirement was preempted by the National Voter Registration Act (NVRA) as applied to federal elections. Confusion ensued when the state limited voters using the federal form to voting in federal elections, even if the state had information in its possession confirming the applicant was a United States citizen. The Lawyers' Committee and other civil rights organizations sued, alleging that the state's two-tier registration process constituted an unconstitutional burden on the right to vote, and obtained a settlement that allows the state to continue to require proof of citizenship to register to vote in state, but requires the state to treat federal and state registration forms the same and to check motor vehicle databases for citizenship documentation before limiting users of the federal registration form to voting in federal elections.¹⁴

Later, the Lawyers' Committee again intervened on behalf of the Inter Tribal Council of Arizona, Inc. to successfully defeat an attempt by the states of Arizona and Kansas to modify the state-specific instructions of the federal mail voter registration form to require applicants residing in Kansas and Arizona to submit proof-of-citizenship documents in accordance with state law.¹⁵

In January 2016, then-U.S. Election Assistance Commission Executive Director Brian Newby, acting without input from the EAC Commissioners, issued notice to Alabama, Georgia, and Kansas that the federal registration form instructions would be amended to allow these states to require citizenship documents from applicants who use the federal registration form. Plaintiffs, represented by a number of civil rights organizations, including the Lawyers' Committee, filed suit to enjoin Newby's action and the United States Court of Appeals for the District of Columbia Circuit preliminarily enjoined the EAC from changing the federal voter registration form after the District Court for the District of Columbia denied Plaintiffs' motion for a preliminary injunction.¹⁶ The case is pending final decision.

The Lawyers' Committee, working with partner civil rights organizations, has also sued the State of Georgia three times to stop its "exact match" practice in voter registration, which required information on voter registration forms to exactly match information about the applicant on Social Security Administration (SSA) or the state's Department of Driver's Services (DDS) databases. Ultimately, the Georgia legislature amended the "exact match" law in 2019 to permit applicants who fail the "exact match" process for reasons of identity to become active voters, but the Legislature chose not to enact any remedial legislation to reform the "exact match" process that continues to inaccurately flag United States citizens as non-citizens.¹⁷

¹³ 570 U.S. 1 (2013).

¹⁴ *League of United Latin Am. Citizens Arizona v. Reagan*, No. CV17-4102, 2018 WL 5983009 (D. Ariz. Nov. 14, 2018).

¹⁵ *Kobach v. U.S. Election Assistance Commission*, 772 F. 3d 1183 (10th Cir. 2015).

¹⁶ *League of Women Voters of United States v. Newby*, 838 F.3d 1 (D.C. Cir. 2016).

¹⁷ *Third Sector Development, et al. v. Kemp, et al.*, No. 2014CV252546, 2014 WL 5113630 (Fulton Cty. Super. Ct. Ga. Oct. 10, 2014); *Georgia State Conference of NAACP, et al., v. Brian Kemp, et al.*, No. 2:16-cv-00219 (N.D. Ga. Sept. 14, 2016); *Georgia Coal. for People's Agenda, Inc. v. Kemp*, 347 F. Supp. 3d 1251 (N.D. Ga. 2018).



In addition to burdens placed on individuals registering to vote, just this spring the State of Tennessee passed a law that imposes severe restrictions on voter registration activity by community groups and third parties—including criminal and civil penalties for failures to comply with the law. The law was enacted in the wake of successful large-scale voter registration initiatives in the state in 2018 which targeted minority and underserved communities. Last month, the court issued a preliminary injunction, at the request of the Lawyers' Committee, representing several civil rights organizations who work to register voters, which stayed implementation of the law, on the basis that we had proved a probability of success on our claims that the law violated the First Amendment and the right to vote.¹⁸

Obstacles to Remaining on the Voter Rolls: Voter Purges

Once an eligible voter is registered, we work to ensure that they stay on the rolls. We have been forced to sue jurisdictions large and small to combat unlawful voter purges.

In 2015, the Board of Elections and Registration in Hancock County, Georgia, changed its process to initiate a series of “challenge proceedings” to voters, all but two of whom were African American, that resulted in the removal of 53 voters from the register. Later that year, the Lawyers' Committee, representing the Georgia State Conference of the NAACP and the Georgia Coalition for the Peoples' Agenda and individual voters, challenged this conduct as violating the VRA and the National Voter Registration Act (NVRA), and obtained a preliminary injunction, which resulted in the ordering of the wrongly-removed voters back on the register. Ultimately plaintiffs and the Hancock County Board agreed to the terms of a Consent Decree to remedy the violations, and subject the County to monitoring its compliance with federal law for five years.¹⁹ But the damage of denying African Americans an equal voice and fair chance at representation was already done: after the purge and prior to the court order, Sparta, a predominantly African American city in Hancock County, elected its first white mayor in four decades, and at least one illegally removed voter died while the litigation was pending, and before she could exercise her franchise.

On November 3, 2016, the Lawyers' Committee and another civil rights organization filed suit alleging that the New York City Board of Elections (NYCBOE) had purged voters from the rolls in violation of the NVRA. Earlier in the year, the NYCBOE had confirmed that more than 126,000 Brooklyn voters were removed from the rolls between the summer of 2015 and the April 2016 primary election. After entry of the State of New York and the U.S. Department of Justice in the case, the NYCBOE agreed to place persons who were on inactive status or removed from the rolls back on the rolls if they lived at the address listed in their voter registration file and/or if they had voted in at least one election in New York City since November 1, 2012 and still lived in the city. Subsequently, the parties negotiated a Consent Decree, under which the NYCBOE agreed

¹⁸ *Tennessee State Conference of the N.A.A.C.P. v. Hargett*, No. 3:19-cv-00365 (M.D. Tenn. 2019).

¹⁹ *Georgia State Conference of NAACP v. Hancock Cty. Bd. of Elections & Registration*, No. 5:15-CV-00414 (CAR) (M.D. Ga. 2015).



to comply with the NVRA before removing anyone from the rolls, and to subject itself to a four-year auditing and monitoring regimen.²⁰

More recently, in January 2019, David Whitley, then-Secretary of State of Texas, sent Texas counties a list containing 95,000 registered voters and directing the counties to investigate their voting eligibility. The list was based on DMV data that the state knew was flawed and would necessarily sweep in thousands of citizens who completed the naturalization process after lawfully applying for a Texas drivers' license. Voting rights advocates, including the Lawyers' Committee, filed lawsuits challenging the purge and obtained a preliminary injunction, enjoining the removal of voters from the rolls based upon this flawed process. The case settled immediately thereafter, with Texas abandoning the process.²¹

Obstacles to Voting: Unduly Restrictive Voter ID

On June 25, 2013, the day *Shelby County* was decided, Texas announced it was going to immediately implement its photo ID law, known as SB 14, which had failed to obtain pre-clearance from the Attorney General or the federal court in accordance with Section 5 of the Voting Rights Act. Several civil rights organizations, including the Lawyers' Committee, and the Department of Justice, challenged the Texas voter ID law under Section 2 of the VRA and the U.S. Constitution.

After years of litigation, the Fifth Circuit Court of Appeals, sitting *en banc*, affirmed the district court's finding that SB 14 had a discriminatory effect on the voting rights of African-American and Latino voters, because they were two to three times less likely to possess the required ID than were white voters, and that it was two to three times more difficult for them to get the ID than it was for white voters.²² The Fifth Circuit also ruled that there were sufficient facts in the record to support the district court's finding that SB 14 had been passed with discriminatory intent, remanding that issue for further fact-finding.

The district court then reconfirmed its finding of discriminatory intent, and the Texas Legislature passed a new law that substantially incorporated the terms of an interim remedial order agreed to by the parties and approved by the Court, which allowed any eligible voter who did not possess the required ID to cast a regular ballot upon execution of a declaration of reasonable impediment. Ultimately, the Fifth Circuit ordered the case dismissed on the basis that the new law provided all the relief to which plaintiffs were entitled.²³

Obstacles to Casting the Vote: Polling Place Locations

Of course, getting and keeping voters on the rolls does not end the story. Voters must be able to get to the polls, and, when at the polls, must be able to vote. In recent years, we have

²⁰ *Common Cause/New York v. Board of Elections in City of New York*, No. 1:16-cv-06122 (E.D.N.Y. 2017).

²¹ *Texas League of United Latino American Citizens v. Whitley*, No. 5:19-cv-00074 (W.D. Tex. Feb. 27, 2019).

²² *Veasey v. Abbott*, 830 F.3d 216 (5th Cir. 2016) (en banc).

²³ *Veasey v. Abbott*, 888 F.3d 792 (5th Cir. 2018).



witnessed the erection of obstacles by closing polling places that are more easily accessible to minority communities, and the prevalence of technological and other malfunctions that lead to long lines, discouraging voters from casting their ballots.

Some of these problems have been resolved without litigation, such as in 2016 when Macon-Bibb County, Georgia attempted to shift a polling place from a location accessible to the African-American community to the Sheriff's office. Because of fears that this decision would reduce turnout among African-American voters, the Lawyers' Committee worked with the Georgia State Conference of NAACP Branches, the Georgia Coalition for the People's Agenda, and New Georgia Project, to organize a successful petition drive that required the Board of Elections to reverse the relocation decision under Georgia law.²⁴ Just this month, the Lawyers' Committee, working with these same organizations, have put Jonesboro, Georgia, on notice that the city's decision to move its only polling place to the police station will have an intimidating effect on African-American voters, and violate their rights under the Voting Rights Act.

Other situations have required litigation, such as the 2014 decision by San Juan County, Utah, to switch to all-mail balloting, but allowing in-person early voting at a single location only, easily accessible to the white population, but three times less accessible to the sizable Navajo population, who had to drive on average three hours to get to the polling place. The matter settled with the establishment of three polling locations on land of the Navajo Nation.²⁵

Obstacles to Casting the Vote: Ineffective Language Assistance

Section 203 of the Voting Rights Act requires jurisdictions with at least five percent of its citizens as members of a single-language minority group to provide effective language assistance at the polls.²⁶ In the San Juan County, Utah, case described above, plaintiffs also alleged that the County failed to meet this standard as to its Navajo language speakers. The settlement we and our partner organizations achieved requires the County to provide in-person language assistance on the Navajo reservation for the 28 days prior to each election through the 2020 general election, and to take additional action to ensure quality interpretation of election information and materials in the Navajo language.²⁷

Obstacles to Casting the Vote: Long Lines

Long lines on election day also pose a barrier to voting, which disproportionately impacts people of color and low-income voters. Casting a ballot necessitates arranging for transportation to the polling place, and often taking time off from work, which can be challenging even when the polling place is nearby and adequately staffed. However, waiting in long lines—often for hours—

²⁴ Stanley Dunlap, *Macon-Bibb Polling Location OK'd After Sheriff's Precinct Nixed*, The Telegraph (May 16, 2016), <http://www.macon.com/news/local/article77929442.html>.

²⁵ *Navajo Nation Human Rights Comm'n v. San Juan County*, 216CV00154, 2017 WL 3976564, at *1 (D. Utah Sept. 7, 2017).

²⁶ 52 U.S.C. § 10503(b)(2).

²⁷ *Navajo Nation Human Rights Comm'n v. San Juan County*, 216CV00154, 2017 WL 3976564, at *1 (D. Utah Sept. 7, 2017).



at polling places can result in people being forced to leave before they are able to vote, denying them the exercise of the franchise. Long lines can result from the closure of polling places, particularly in communities of color, as well as having inadequate staffing and too few machines at the polls.

For instance, the Lawyers' Committee sued Maricopa County in 2016, after the County slashed the number of polling places from 211 in 2012 to 60 "mega-centers" in 2016, resulting in one polling place for every 21,000 voters, compared to one for every 1,500 elsewhere in the state. Sixty percent of Arizona's minority voters reside in the County. The parties settled the case with an agreement that required Maricopa County to create a comprehensive wait-time reduction plan and a mechanism to address wait times at the polls that exceed 30 minutes.²⁸

On Election Day 2018, technology failures in precincts with large African-American populations in Fulton County, Georgia, caused extraordinary long lines. Plaintiffs, working with the Lawyers' Committee's Election Protection program, obtained hours' long extensions at two of these precincts in order to enable more people to vote that day.²⁹

Obstacles to Casting the Vote: Improper Handling of Absentee Ballots

On October 23, 2018, the Lawyers' Committee joined lawsuits challenging Georgia's practices of 1) rejecting absentee ballots based upon election officials' untrained conclusion that the voter's signature on the absentee ballot envelope did not match the voter's signature on file with the registrar's office, and 2) rejecting absentee ballots for immaterial errors or omissions on the ballot envelope. Georgia had an extraordinarily high rate of absentee ballot rejections generally, but the rejection rate in Gwinnett County was almost 3 times that of the state and absentee ballots cast by voters of color were rejected by Gwinnett County at a rate between 2 and 4 times the rejection rate of absentee ballots cast by white voters. Plaintiffs were granted preliminary relief before the November 2018 mid-term election. Subsequently, Georgia enacted remedial legislation and the lawsuits were voluntarily dismissed in 2019.³⁰

Obstacles to the Vote Counting: Faulty Technology

The Lawyers' Committee and co-counsel represented the Coalition for Good Governance and individual plaintiffs in a suit challenging Georgia's use of electronic ballot machines system, alleging that the vulnerability of the machines to tampering and their failure to have a paper back-up so voters can verify their votes violate the constitutional right to vote. Part of plaintiffs' proofs were an unexplained disparity in the votes by African Americans, when using the electronic ballot system, compared to their use of paper absentee ballots.

²⁸ *Huerena v. Reagan*, Superior Court of Arizona, Maricopa County, CV2016-07890 (D. Ariz. July 7, 2016).

²⁹ *Georgia State Conference of NAACP, et al. v. Fulton County Bd. of Reg. & Elections* (Fulton Cty. Super. Ct. Ga. Nov. 6, 2018).

³⁰ *Martin v. Kemp*, No. 18-14503-GG (N.D. Ga. 2018).



On August 9, 2019, the district court preliminarily enjoined the state's use of its direct-recording electronic voting machines for all elections after December 31, 2019. The court further directed that, if the state is unable to implement completely a new system beginning January 2020, it must be ready to use paper ballots. The court also ordered that the state ensure that all polling places have paper back-ups for their electronic polling books.³¹

Obstacles to a Vote Counting Equally: Vote Dilution

Section 2 of the Voting Rights Act prohibits not only the discriminatory denial of vote, as in the Texas Photo ID case, but also the discriminatory dilution of votes, such as where they way election district lines are drawn curtail the ability of voters of color to elect candidates of their preference. The Lawyers' Committee has brought several successful suits challenging such practices.

In Emanuel County, Georgia, the Lawyers' Committee represented plaintiffs who alleged that the district boundaries for seven School Board districts impermissibly diluted the voting strength of African American voters by "packing" them into one district. African Americans comprise 81 percent of the voting-age population in one of the districts and a minority in all of the other six. Although African Americans made up one-third of the county's voting-age population and close to half of the students in Emanuel County, and although African American candidates had run in other districts, there had never been more than one African American member on the School Board at one time. After suit was filed, the parties negotiated a settlement, resulting in the creation of two majority-minority single-member districts.³²

Similarly, in Jones County, North Carolina, plaintiffs, represented by the Lawyers' Committee, challenged the at-large scheme of electing members to the Jones County, NC Board of Commissioners, to which no African American had ever been elected since 1998, despite African Americans comprising 30 percent of the population. The parties settled the matter with an agreement that the Board of Commissioners would implement a seven single-member district electoral plan, including two single-member districts in which African American voters constitute a majority of the voting-age population.³³

Most recently, Black Mississippi voters filed a challenging the districting plan for Mississippi State Senate District 22 under Section 2 of the Voting Rights Act. Plaintiffs, represented by the Lawyers' Committee and Mississippi Center for Justice contended that the plan diluted the voting strength of Black voters and, combined with racially polarized voting, prevented them from electing candidates of their choice to the Senate District 22 seat. Plaintiffs prevailed at trial and the trial court gave the Legislature an opportunity to re-draw the district to comply with the court's decision. After failing to obtain a stay of the court's order, the Legislature redrew the district to create a district with a sufficiently large Black voting population to give Black voters an equal opportunity to elect candidates of their preference. The Fifth Circuit affirmed the district

³¹ *Donna Curling, et al. v. Brian Kemp, et al.* No. 1:17-cv-02989-AT (N.D. Ga. Aug. 8, 2017).

³² *Georgia State Conference of NAACP, et al., v. Emanuel County Board of Commissioners, et al.*, No. 6:16-cv-021 (S.D. Ga. Feb. 23, 2016).

³³ *Hall v. Jones Cty. Bd. of Commissioners*, No. 4:17-cv-00018 (E.D.N.C. Aug. 23, 2017).



court's decision.³⁴ Last month, the Fifth Circuit issued an order, *sua sponte*, accepting the matter for review before the Fifth Circuit, sitting *en banc*.³⁵

Proactively Protecting the Vote Through Election Protection

In our role as leader of Election Protection, the Lawyers' Committee convenes a growing network of more than 200 national, state and local coalition partners, over 100 law firms and thousands of trained legal volunteers to provide front-line assistance to an average of over a hundred thousand voters each election year. This support is provided through the 866-OUR-VOTE hotline which operates year-round, the deployment of grassroots organizers and volunteers to hot spots across the country, and legal advocacy, intervention and litigation to help disrupt the most significant voting barriers that emerge across the country. Without question, this work has intensified and increased.

In coordination with coalition partners, we recruit, train and deploy thousands of volunteer poll monitors around the country each year. Examples of large entities that promote and rely on and partner with Election Protection include the ACLU, the NAACP, Common Cause, AAJC, Rock the Vote, and many others. However, we also have great resonance with local grassroots organizations as well such as Democracy North Carolina, the Arizona Advocacy Network, the Milwaukee Area Labor Council, Georgia Coalition for the People's Agenda, One Voice—Mississippi, the Virginia Civic Engagement Table, Philadelphia Public Interest Law Center and more.

Our program has a track record of proven success and impact, staffed by well-trained individuals and anchored by a strong infrastructure. We work year-round to remove barriers to voting through voter education, advocacy, and, when necessary, litigation.

In 2018, our Election Protection call center fielded traffic mirroring the 2016 presidential election cycle. Our data show that our national, nonpartisan assistance to voters helped hundreds of thousands of voters cast a ballot that count in 2018. On Election Day 2018, the Election Protection hotlines received around 31,000 calls, and in the three days after the midterms, the 866-OUR-VOTE hotline continued to receive several thousand calls from voters who had short time lines to cure issues with affidavit ballots, had concerns with run-off elections and more. Overall, we received more than 78,000 calls to the hotlines (and texts) in 2018. While some calls reflected individualized problems, many reflected problems that were systemic in scope and dimension—giving us the opportunity to address problems impacting voters in entire cities, counties, and states.

Since the Election Protection program is housed within the Lawyers' Committee, we use rapid response litigation and maintain an active docket of cases that are responsive to voter suppression efforts uncovered through our vast Election Protection network. Without the full protections of the Voting Rights Act, we expect that the strains and burdens placed on our Election Protection program will increase in the road ahead.

³⁴ *Thomas v. Bryant*, 919 F.3d 298 (5th Cir. 2019).

³⁵ *Joseph Thomas, et al. v. Phil Bryant, et al.*, No. 19-60133 (5th Cir. Sept. 23, 2019).



Conclusion

Our nation is at a critical juncture in the battle—as long as the history of this nation—to ensure true equality of voting rights for all. People of color continue to be disproportionately targeted by voter suppression tactics, some of which are modern and more subtle forms of discrimination, but no less effective in denying access to the franchise or diminishing the electoral power of communities of color. Restoring the full protections of the Voting Rights Act and reinvigorating its enforcement by the Department of Justice is essential to achievement of equal access to the ballot and equal representation. As long as access to the ballot continues to be contested, vigilance is required, and I urge this Committee and this Congress to act with increased rigor to fulfill the promises of our Constitution and protect the equal opportunity to cast a vote and participate in our democracy.