LAWYERS' COMMITTEE FOR
CIVIL RIGHTS
UNDER LAW

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U.S. HOUSE COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS AND CIVIL LIBERTIES HEARING ON "DISCRIMINATORY BARRIERS TO VOTING"

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Introduction

Chairman Cohen, Ranking Member Johnson, and Members of the Subcommittee on the Constitution, Civil Rights and Civil Liberties of the U.S House of Representatives Committee on the Judiciary, my name is Jon Greenbaum and I serve as the Chief Counsel for the Lawyers' Committee for Civil Rights Under Law ("Lawyers' Committee"). Thank you for the opportunity to testify today on the following topics:

- the Supreme Court's decision in *Shelby County v. Holder*,[1] which effectively immobilized the preclearance provisions of Section 5 of the Voting Rights Act by finding its underlying coverage formula unconstitutional;
- the efficiency of the Section 5 process prior to the *Shelby County* decision; the negative effect of the *Shelby County* decision on minority voting rights and the limitations and costs of employing Section 2 of the Act as a substitute;
- the high level of voting discrimination since the *Shelby County* decision, especially in the jurisdictions formerly covered by Section 5;
- how the replacement coverage formula in HR4, the Voting Rights Advancement Act,[2] sufficiently responds the constitutional issues raised by the Supreme Court in Shelby County.

I come to my conclusions based on twenty-two years of working on voting rights issues nationally. From 1997 to 2003, I served as a Senior Trial Attorney in the Voting Section at the United States Department of Justice, where I enforced various provisions of the Voting Rights Act, including Section 5, on behalf of the United States. In the sixteen years since, I have continued to work on voting rights issues at the Lawyers' Committee for Civil Rights Under Law as Chief Counsel, where I oversee our Voting Rights Project, and prior to that, I served as Director of the Voting Rights Project.

The Lawyers' Committee is a national civil rights organization created by President Kennedy in 1963 to mobilize the private bar to confront issues of racial discrimination. Voting rights has been an organizational core area since the inception of the organization. During my time at the Lawyers' Committee, among other things, I was intimately involved in the constitutional defense of Section 5 and its coverage formula in *Shelby County,* its predecessor case *Northwest Austin Municipal Utility District No. 1 v. Holder,* and two extensive reports that have examined the extent of minority voting discrimination based on DOJ and court enforcement records and numerous field hearings: National Commission on Voting Rights, *Protecting Minority Voters: Our Work Is Not Done* (2014) ("2014 National Commission Report") and *The National Commission on the Voting Rights Act, Protecting Minority Voters: The Voting*

[1] 570 U.S. 529 (2013).
[2] Voting Rights Advancement Act, H.R. 4, 116th Cong. 2019.

Rights Act at Work 1982-2005 (2006). The report and record of the latter National Commission, which was submitted to the House Judiciary Committee at the Committee's request, was the largest single piece of the record supporting the Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006 ("2006 VRA Reauthorization"). The Lawyers' Committee is currently compiling a report that will detail the federal enforcement record of voting discrimination on a state-by-state basis for the last twenty-five years. We hope to release this report to the public in early October.

The *Shelby County* decision

Prior to the *Shelby County* decision, the combination of Section 2 and Section 5 of the Voting Rights Act provided a relatively effective means of preventing and remedying minority voting discrimination. Section 2, which is discussed more fully below, remains as the general provision enabling the Department of Justice and private plaintiffs to challenge voting practices or procedures that have a discriminatory purpose or result. Section 2 is in effect nationwide.[3] Section 5 required jurisdictions with a history of discrimination, based on a formula set forth in Section 4(b), to obtain preclearance of any voting changes from the Department of Justice or the District Court in the District of Columbia before implementing the voting change.[4] From its inception, there was a sunset provision for the formula, and subset provision for the 2006 Reauthorization was 25 years.[5]

In the *Shelby County* case, the Supreme Court decided in a 5-4 vote that the Section 4(b) coverage formula was unconstitutional. The majority held that because the Voting Rights Act "'impose[d] current burdens,'" it "'must be justified by current needs.'"[6] The majority went on to rule that because the formula was comprised of data from the 1960s and 1970s, it could not be rationally related to determining what jurisdictions, if any, should be covered under Section 5 decades later.[7] The four dissenting justices found that Congress had demonstrated that regardless of what data was used to determine the formula, voting discrimination had persisted in the covered jurisdictions.[8] The majority made clear that "[w]e issue no holding on §5 itself, only on the coverage formula. Congress may draft another formula based on current conditions."[9]

The effect of the *Shelby County* decision is that Section 5 is effectively

[3] 52 U.S.C. § 10301.
[4] 52 U.S.C. §§ 10303(b),10304.
[5] 52 U.S.C. § 10303(b).
[6] *Shelby County*, 570 U.S. at 536 (quoting *Northwest Austin Municipal Util. Dist. No. One v. Holder,* 557 U.S. 193 at 203) 2009.
[7] *Shelby County*, 557 U.S. at 545-54.
[8] *Id.* at 560 (Ginsberg, J. dissenting).
[9] *Id.* at 556.

immobilized as, for now, preclearance is limited only to those jurisdictions where it is imposed by a court after a court previously made a finding of intentional voting discrimination. This special preclearance coverage is authorized by Section 3(c) of the Act. Courts have rarely ordered Section 3(c) coverage, and when they do, it is typically quite limited. Indeed, the only jurisdictions I am aware of that our currently subject to Section 3(c) coverage are Pasadena, Texas and Evergreen, Alabama.[10] In the case of Pasadena, the only changes subject to preclearance relate to the method of election and redistricting.[11]

As a result, Section 5 is essentially dead until Congress takes up the Supreme Court's invitation to craft another coverage formula. There are compelling reasons for Congress to do so because, as discussed below, voting discrimination has increased in the absence of Section 5, and Section 2 cannot adequately substitute for Section 5.

How Section 5 worked prior to the *Shelby County* decision

Before looking at the *post-Shelby County* record, it is important to first understand how Section 5 worked prior to the *Shelby County* decision. Covered jurisdictions had to show federal authorities that the voting change did not have a discriminatory purpose or effect. Discriminatory purpose under Section 5 was the same as the Fourteenth and Fifteenth Amendment prohibitions against intentional discrimination against minority voters.[12] Effect was defined as a change which would have the effect of diminishing the ability of minority voters to vote or to elect their preferred candidates of choice.[13] This was also known as retrogression, and in most instances was easy to measure and administer. For example, if a proposed redistricting plan maintained a majority black district that elected a black preferred candidate at the same black population percentage as the plan in effect, it would be highly unlikely to be found retrogressive. If, however, the proposed plan significantly diminished the black population percentage in the same district, it would invite serious questions that it was retrogressive.

Except in rare circumstances, covered jurisdictions would first submit their voting changes to the Department of Justice. DOJ had sixty days to make a determination on a change, and if DOJ precleared the change or did not act in 60 days, the covered jurisdiction could implement the change.[14] The submission of additional information by the jurisdiction, which often happened because DOJ requested such information orally, would extend the 60 day period if the submitted information materially supplemented the submission.[15] DOJ could extend the 60 period once by

[10] *See Patino v. City of Pasadena*, 230 F. Supp. 667, 729 (S.D. Tex. 2017).
[11] *Id.*
[12] 52 U.S.C. § 10304(c).
[13] 52 U.S.C. § 10304(b), (d).
[14] 52 U.S.C. § 10304(a).
[15] *Id.* Procedures for the Administration of Section 5 of the Voting Rights Act ("Section 5 Procedures"), 28 C.F.R. §

sending a written request for information to the jurisdiction.[16] This often signaled to the jurisdiction that DOJ had serious concerns that the change violated Section 5. If DOJ objected to a change, it was blocked, but jurisdictions had various options, including requesting reconsideration from DOJ, Section 5 Procedures,[17] seeking preclearance from the federal court,[18] and modifying the change and resubmitting it.

In the nearly seven years I worked at DOJ, I witnessed first-hand how effective Section 5 was at preventing voting discrimination and how efficiently DOJ administered the process to minimize the burdens to its own staff of attorneys and analysts, and to the covered jurisdictions. The Section 5 Procedures cited above provided transparency as to DOJ's procedures and gave covered jurisdictions guidance on how to proceed through the Section 5 process. Internal procedures enabled DOJ staff to preclear unobjectionable voting changes with minimal effort and to devote the bulk of their time to those changes that required close scrutiny.

The benefits of Section 5 were numerous and tangible. The 2014 National Commission Report provided the following statistics and information regarding DOJ objections:

> By any measure, Section 5 was responsible for preventing a very large amount of voting discrimination. From 1965 to 2013, DOJ issued approximately 1,000 determination letters denying preclearance for over 3,000 voting changes. This included objections to over 500 redistricting plans and nearly 800 election method changes (such as the adoption of at-large election systems and the addition of majority-vote and numbered-post requirements to existing at-large systems). Much of this activity occurred between 1982 (when Congress enacted the penultimate reauthorization of Section 5) and 2006 (when the last reauthorization occurred); in that time period approximately 700 separate objections were interposed involving over 2,000 voting changes, including objections to approximately 400 redistricting plans and another 400 election method changes.
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> Each objection, by itself, typically benefited thousands of minority voters, and many objections affected tens of thousands, hundreds of thousands, or even (for objections to statewide changes) millions of minority voters. It would have required an immense investment of public and private resources to have accomplished this through the filing of individual lawsuits.[19]

51.37.

[16] Section 5 Procedures, 28 C.F.R. § 51.37.

[17] 28 C.F.R. § 51.45

[18] 52 U.S.C. § 10304(a)

[19] National Commission on Voting Rights, Protecting Minority Voters: Our Work Is Not Done 56 (2014) (internal citations omitted).

In addition to the changes that were formally blocked, Section 5's effect on deterring discrimination cannot be understated. Covered jurisdictions knew that their voting changes would be reviewed by an independent body and they had the burden of demonstrating that they were non-discriminatory. By the time I began working at DOJ, Section 5 had been in effect for several decades and most jurisdictions knew better than to enact changes which would raise obvious concerns that they were discriminatory – like moving a polling place in a majority black precinct to a sheriff's office. In the post-*Shelby* world, a jurisdiction is likely to get away with implementing a discriminatory change for one election (or more) before a plaintiff receives relief from a court, as the Hancock County, Georgia voter purge and Texas voter identification cases detailed later illustrate.

The Section 5 process also brought notice and transparency to voting changes. Most voting changes are made without public awareness. DOJ would produce a weekly list of voting changes that had been submitted, which individuals and groups could subscribe to in order to receive this weekly list from DOJ.[20] For submissions of particular interest, DOJ would provide public notice of the change if it believed the jurisdiction had not provided adequate notice of the change.[21] But even more importantly, the Section 5 process incentivized jurisdictions to involve the minority community in voting changes. DOJ's Section 5 Procedures requested that jurisdictions with a significant minority population provide the names of minority community members who could speak to the change,[22] and DOJ's routine practice was to call at least one local minority contact and to ask the individual whether she or he was aware of the voting change and had an opinion on it. Moreover, involved members of the community could affirmatively contact DOJ and provide relevant information and data.[23]

Why Section 2 is an inadequate substitute for Section 5

Prior to the *Shelby County* decision, critics of Section 5 frequently minimized the negative impact its absence would have by pointing out that DOJ and private parties could still stop discriminatory voting changes by bringing affirmative cases under Section 2 of the Voting Rights Act. Indeed, in the same paragraph of *Shelby County* where the Supreme Court majority states that Congress could adopt a new formula for Section 5, it also notes that its "decision in no way affects the permanent, nation-wide ban on racial discrimination in voting found in §2."[24]

[20] Section 5 Procedures, 28 C.F.R. § 51.32-51.33.
[21] *Id.* at 28 C.F.R. § 51.38(b).
[22] *Id.* at 28 C.F.R. § 51.28(h).
[23] *Id.* at 28 C.F.R. § 51.29.
[24] *Shelby County*, 570 U.S. at 556.

During the *Shelby County* litigation and the reauthorization process preceding it, defenders of Section 5 repeatedly pointed out why Section 2 was an inadequate substitute. Six years of experience demonstrate this.

This is hardly a surprise given that Section 5 and Section 2 were designed by Congress to complement one another as part of comprehensive set of tools to combat voting discrimination. Section 5 was designed to prevent a specific problem – to prevent jurisdictions with a history of discrimination from enacting new measures that would undermine the gains minority voters were able to secure through other voting protections, including Section 2. The Section 5 preclearance process was extremely potent, but also efficient and surgical in its limited geographic focus and sunset provisions. It was also relatively easy to evaluate because the retrogressive effect standard – whether minority voters are made worse off by the proposed change – is simple to determine in all but the closest cases. Section 5 is designed to protect against discriminatory changes to the status quo.

Section 2 is quite different. It evaluates whether the status quo is discriminatory and thus must be changed. The test for liability should be, and is, rigorous because it is a court-ordered change. Although Section 2 (results) and Section 5 (retrogression) both have discriminatory impact tests, they are distinct. As discussed above, the Section 5 retrogression test is quite straightforward in determining whether a jurisdictional-generated change should be blocked — will minority voters be worse off because of the change?

In contrast, the Section 2 results inquiry is complex and resource intensive to litigate. The "totality of circumstances" test set forth in the statute is fact-intensive by its own definition. The Senate Report supporting the 1982 amendment to Section 2 lists factors that courts have used as a starting point in applying the totality of circumstances test to include seven such factors (along with two factors plaintiffs have the option to raise).[25] On top of the Senate factors, courts have introduced additional requirements. For example, in vote dilution cases, which typically involve challenges to redistricting plans or to a method of election, the plaintiff must first satisfy the three preconditions set forth by the Supreme Court in *Thornburg v. Gingles*,[26] before even getting to the Senate factors. These *Gingles* preconditions require plaintiffs to show that that a minority group is compact and numerous enough to constitute a majority of eligible voters in an illustrative redistricting plan and whether there is racially polarized voting (minority voters are cohered in large number to support certain candidates and those candidates are usually defeated because of white bloc voting) and are necessarily proven by expert testimony. In vote denial cases, which involve challenges to practices such as voter identification laws, courts have also added an additional test, with the developing majority view requiring that plaintiffs demonstrate

[25] *See e.g.*, *Thornburg v. Gingles*, 478 U.S. 30, 44-45 (1986).
[26] *Id.* at 50-51.

that the challenged law imposes a discriminatory burden on members of a protected class and that this "burden must be in part caused by or linked to social conditions that have or currently produce discrimination against members of the protected class."[27]

The result is that Section 2 cases are extremely time-consuming and resource-intensive, particularly when defendants mount a vigorous defense. For example, *United States v. Charleston County*,[28] which I litigated at the Department of Justice, was a successful challenge to the at-large method of electing the Charleston (South Carolina) County Council. The litigation took four years, and it involved more than seventy witness depositions and a four-week trial, even though we had prevailed on the *Gingles* preconditions on summary judgment,[29] and needed to litigate only the totality of circumstances in the district court.

Below is an analysis of the voting cases the Lawyers' Committee has participated in since 2013 that is detailed in Appendix A and B. Thirteen of the cases involve voting changes, ten in covered jurisdictions, two in non-covered jurisdictions, and the thirteenth of the Federal Government. In my view, the changes in all ten of the cases in covered jurisdictions would have been blocked by Section 5 because they were retrogressive. In the ten cases we filed, we included Section 2 claims only five times. In the other five cases although we believed the changes had a discriminatory impact we were concerned about meeting the demanding standard of proof under Section 2 or the time and resources it would take to do so. In the five cases that contained a Section 2 claim, we included other claims. Of all of the cases in which we filed for a temporary restraining order or a motion for preliminary injunction, we used Section 2 as a basis only once.

Three specific examples from the Lawyers' Committee's litigation record illustrate why Section 2 is an inadequate substitute for Section 5. The most prominent example is the Texas voter identification law, which illustrates the time and expense of litigating a voting change under Section 2 that both DOJ and the federal district court found violated Section 5 prior to the *Shelby County* decision.[30] The afternoon that *Shelby* was decided, then-Texas Attorney General Greg Abbott announced that the State would immediately implement the ID law.[31] Several civil rights groups, including the Lawyers' Committee, filed suit in Texas federal court, challenging SB 14 under several theories, including Section 2 and DOJ filed its own suit under Section 2 and all of the cases were consolidated. The parties then embarked on months of discovery, leading to a two-week trial in September 2014, where dozens of witnesses, including 16 experts — half of whom were paid for by the civil rights groups — testified.

[27] *Veasey v. Abbott*, 830 F.3d 216, 244 (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 Conference for the NAACP v. Husted, 786 F.3d 524, 554 (6th Cir. 2014).
[28] 316 F. Supp. 2d 268 (D.S.C. 2003), aff'd, 365 F.3d 341 (4th Cir.), *cert denied*, 543 U.S. 999 (2004).
[29] *United States v. Charleston County*, 318 F. Supp. 2d 302 (D.S.C. 2002).
[30] *Veasey*, 830 F.3d at 227 n.7.
[31] *Id.* at 227.

Prior to the November 2014 election, the District Court ruled that SB 14 violated the "results" prong of Section 2 of the Voting Rights Act, because it had a discriminatory result in that Black and Hispanic voters were two to three times less likely to possess the SB 14 IDs and that it would be two to three times more burdensome for them to get the IDs than for white voters. The District Court's injunction against SB 14, however, was stayed pending appeal by the Fifth Circuit, so the law — now deemed to be discriminatory — remained in effect.[32] Subsequently, a three-judge panel and later an *en banc* panel of the Fifth Circuit Court of Appeals, affirmed the District Court's finding.[33] As a result, elections that took place from June 25, 2013 until the Fifth Circuit *en banc* opinion on July 20, 2016 took place under the discriminatory voter ID law. Had Section 5 been enforceable, enormous expense and effort would have been spared. The civil groups are seeking $6,767,508.37 in attorneys' fees and $946,844.87 in expenses, for a total of $7,714,353.24. As of June 2016, Texas had spent $3.5 million in defending the case.[34] Even with no published information from DOJ, more than $10 million in time and expenses were expended in that one case.

In *Gallardo v. State*,[35] the Arizona legislature passed a law that applied only to the Maricopa County Community College District and added two at-large members to what was previously a five-single district board. The legislature had submitted the change for Section 5 preclearance. The Department of Justice issued a more information letter based on concerns that the addition of two at-large members, in light of racially polarized voting in Maricopa County, would weaken the electoral power of minority voters on the board. After receiving the more information letter, Arizona officials did not seek to implement the change. Only after the *Shelby County* decision did they move forward, precipitating the lawsuit brought by the Lawyers' Committee and its partners. We could not challenge the change under Section 2, especially because we would not have been able to meet the first *Gingles* precondition. Instead we made a claim in state court alleging that the new law violated Arizona's constitutional prohibition against special laws because the board composition of less populous counties was not changed. Reversing the intermediate court of appeal, the Arizona Supreme Court rejected our argument, holding that the special laws provision of the state constitution was not violated. Unsurprisingly, the Latino candidate who ran for the at-large seat in the first election lost and the two at-large members are white.

In 2015, the Board of Elections and Registration, in Hancock County, Georgia, changed its process so as to initiate a series of "challenge proceedings" to voters, all but two of whom were African American. This resulted in the removal of 53 voters from the register. Later that year, the Lawyers' Committee, representing the Georgia State Conference of the NAACP and the Georgia Coalition for the Peoples' Agenda and individual voters, challenged this conduct as violating the Voting Rights Act and the

[32] *Id.* at 227-29, 250.
[33] *Id.* at 224-25.
[34] Jim Malewitz & Lindsay Carbonell, Texas' Voter ID Defense Has Cost $3.5 Million, The Texas Tribune (June 17, 2016), https://www.texastribune.org/2016/06/17/texas-tab-voter-id-lawsuits-more-35-million/.
[35] 236 Ariz. 84, 336 P.3d 717 (2014).

National Voter Registration Act, and obtained relief which resulted in the placement of unlawfully-removed voters back on the register.[36] Ultimately, plaintiffs and the Hancock County Board agreed to the terms of a Consent Decree that will remedy the violations, and require the county's policies to be monitored for five years. But after the purge and prior to the court order, Sparta, a predominantly black city in Hancock County, elected its first white mayor in four decades. And before the case was settled, and the wrongly-purged voters placed back on the rolls, at least one of them had died.

Section 2 was not designed to stop retrogressive voting changes from taking effect and so it is an ill-suited replacement for Section 5. In the nearly forty years since Section 2 was expanded in 1982 to include discriminatory results claims, there are few cases in which Section 2 plaintiffs have obtained preliminary relief among the several hundred cases in which Section 2 plaintiffs ultimately succeeded through a court judgment or a settlement.

The Lawyers' Committee's voting litigation record post-*Shelby County* shows the high degree of voting discrimination, particularly in the areas formerly covered by Section 5

The Lawyers' Committee's litigation record since the *Shelby County* decision bears out both the high degree of contemporaneous voting discrimination and the inadequacy of Section 2 as a substitute for Section 5. Through our Voting Rights Project, we have been involved in 41 voting cases since the *Shelby County* decision. This record ranks either first or second of any entity nationally. A narrative summary of each case can be found at Appendix A and a summary table of the cases can be found at Appendix B. It is important to note that as, a racial justice organization, the Lawyers' Committee does not participate in litigation where we do not believe the issue at hand involves a question of discriminatory purpose and/or impact.

This record is notable in a number of respects. First, our litigation docket has become more active in the post-*Shelby County* years. Though I do not have exact numbers for the pre-*Shelby County* period, I can confidently say that we have had more cases in my six post-*Shelby County* years at the Lawyers' Committee than in my ten pre-*Shelby County* years.

Second, although we have participated in cases all over the country, most of our voting litigation has involved jurisdictions covered by Section 5 prior to *Shelby County*. 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 the country was covered by Section 5. Moreover, we have sued seven of the nine states that were covered by Section

[36] Georgia State Conference of the NAACP v. Hancock County, Case No. 15-cv-414 (M.D. Ga. 2015).

5 (Alabama, Arizona, Georgia, Louisiana, Mississippi, Texas, Virginia), as well as the two states that had were not covered but had a substantial percentage of the population covered locally (North Carolina and New York). To be clear, I am not talking about cases brought against local jurisdictions in a state, but cases brought against state officials.

Third, we have achieved substantial success. Of the thirty-three cases where there has been some result, we have achieved a positive result in 26 of 33 (78.8%). In most of the seven cases where we were not successful, we had filed emergent litigation – either on Election Day or shortly before – where achieving success is most difficult.

This data tells us that voting discrimination remains substantial, especially considering that the Lawyers' Committee is but one organization, and particularly in the areas previously covered by Section 5.

Notwithstanding the successes of the Lawyers' Committee and others, the hole left by the absence of Section 5 is immense. We are simply unaware of many potentially discriminatory voting changes that are enacted. Even when we are aware of the changes, without Section 5, it is extremely difficult to stop changes from going into effect through litigation, as demonstrated above. Such litigation is extremely resource-intensive, both in time and expense, and the relatively small voting rights bar has significant limits on how cases it can litigate simultaneously. The case-by-case method is inefficient and inadequate as compared to Section 5.

These issues will be exacerbated enormously during the post-2020 Census redistricting, as several thousand formerly covered jurisdictions will be redistricted within about a two-year window and Section 5 will not available to protect minority voters for the first time since the 1960s. Critics of Section 5 cited the costs to state sovereignty and the resource costs of Section 5 as reasons why it should be abandoned. These costs pale in comparison to the costs to minority voting rights in the absence of Section 5 as well as the resource costs involved in evaluating the redistricting plans in several thousand jurisdictions and litigating individual plans on grounds they are discriminatory. Moreover, Section 2 will serve to protect minority voters only where they can constitute a majority of voters in a district,[37] whereas Section 5 is not so limited. In certain areas of the country, minority voters in some districts have been able to elect candidates of choice with slightly less than a majority. These districts will not be protected under Section 2 as they were under Section 5.

Using the standards set forth in *Shelby County*, the current need for Section 5 outweighs the current burden in those areas with persistent and current discrimination.

[37] *Bartlett v. Strickland*, 559 U.S. 1 (2009)

The Voting Rights Advancement Act's (VRAA) Coverage Formula is Constitutional

The Supreme Court majority in *Shelby County* found that Congress's readopting of a coverage formula in 2006 based on voter registration and turnout data from the 1964, 1968, and 1972 election was irrational, irrespective of whether voting discrimination was still concentrated in the covered areas. According to the Court, the formula itself must be based on current data and must be constructed based on the current problems in order to be rational:

> Congress did not use the record it compiled to shape a coverage formula grounded in current conditions. It instead reenacted a formula based on 40-year-old facts having no logical relation to the present day. The dissent relies on "second-generation barriers," which are not impediments to the casting of ballots, but rather electoral arrangements that affect the weight of minority votes. That does not cure the problem. Viewing the preclearance requirements as targeting such efforts simply highlights the irrationality of continued reliance on the § 4 coverage formula, which is based on voting tests and access to the ballot, not vote dilution. We cannot pretend that we are reviewing an updated statute, or try our hand at updating the statute ourselves, based on the new record compiled by Congress.[38]

In my view, the geographical coverage formula contained in the VRAA's amendment to Section 4(b) satisfies the constitutional concerns articulated by the Court because it is based on current data and is designed to address current problems.

The threshold for coverage is a relatively high one — statewide coverage applies only if, during the last 25 calendar years, there have been 15 or more voting rights violations in the State or 10 or more violations with at least one committed by the State.[39] For political subdivisions, coverage applies only if there are three voting rights violations within the political subdivision in the past twenty-five years.[40] Violations are based on DOJ objections, court findings of voting discrimination, or a settlement of a Voting Rights Act and/or constitutional challenge to a voting law or practice that results in a change to that voting law or practice.

This formula is tailored to ensure that only those jurisdictions that have

[38] *Shelby County*, 570 U.S. at 554.
[39] Voting Rights Advancement Act, H.R. 4, 116th Cong. 2019.
[40] *Id.*

engaged in persistent voting discrimination over a sustained period of time are covered. No jurisdiction will be covered because of a one-time episode. Coverage is rolling: jurisdictions whose records improve can get out under the formula, those whose worsen can be added. The twenty-five period is logical because it ensures that two redistricting cycles are within the window of review, which is important because redistricting and changes related to redistricting (such as precinct boundaries and polling place changes) represent the most frequent occurrences of voting discrimination.

Conclusion

The Supreme Court decision in *Shelby County v. Holder* left minority voters the most vulnerable to voting discrimination they have been in decades. The record since the *Shelby County* decision demonstrates what voting rights advocates feared – that without Section 5, voting discrimination would increase substantially. It will only get worse with the 2020 election and the post-2020 redistricting on the horizon. For these reasons, it is imperative for Congress to act quickly.

APPENDIX A

CASES THE LAWYERS' COMMITTEE FOR CIVIL RIGHTS' VOTING RIGHT PROJECT HAS PARTICIPATED IN SINCE *THE SHELBY COUNTY V. HOLDER* DECISION[1]

Alabama

Section 2 Vote Dilution Challenge to At-Large Election to State High Courts: On September 7, 2016, the Lawyers' Committee, on behalf of the Alabama NAACP, filed a vote dilution lawsuit under Section 2 of the Voting Rights Act (VRA) in the Middle District of Alabama challenging the state's at-large method of electing justices and judges of the Alabama Supreme Court, the Court of Criminal Appeals, and the Court of Civil Appeals. The case was tried in November 2018 and the parties are awaiting a decision. Despite African Americans comprising more than one-quarter of Alabamians, none sit on any of these 3 courts, and none have been elected to any of these courts in a quarter of a century. The matter has been tried and is awaiting decision. ***Alabama State Conference of NAACP v. Alabama*, 264 F. Supp. 3d 1280 (M.D. Ala. 2017)**

Defense of Suit Challenging Congressional Apportionment and Distribution of Electoral College Votes: The State of Alabama and Congressman Morris J. Brooks, Jr. of Alabama sued the Department of Commerce and others, alleging that the inclusion of undocumented immigrants in the total population count for congressional apportionment and Electoral College votes violates the Fourteenth Amendment, the Census Clause, and the Enumeration Clause of the U.S. Constitution, and the Administrative Procedures Act. The Lawyers' Committee successfully moved to intervene as defendants on behalf of affected local jurisdictions. The matter is pending. ***State of Alabama, et al. v. U.S. Dept. of Commerce, et al.,* No. 2:18-cv-0772-RDP (N.D. Ala., May 21, 2018).**

Arizona

Challenge to At-Large Election System: Prior to the *Shelby County* decision, the Arizona legislature passed a law that applied only to the Maricopa County Community College District and added two at-large members to what was previously a five-single district board. The legislature had submitted the change for Section 5

[1] Lawyers' Committee staff served as counsel in all of these cases except for certain cases filed on Election Day where staff worked with local counsel, who filed the case.

preclearance. The Department of Justice issued a more information letter based on concerns that in light of racially polarized voting in Maricopa County, the addition of two at-large members , would weaken the electoral power of minority voters on the board. After receiving the more information letter, Arizona officials did not seek to implement the change. Only after the *Shelby County* decision did they move forward. Because it would not be possible to meet the first *Gingles* precondition, a Section 2 suit could not be brought, so the Lawyers' Committee and its partners sued in state court alleging that the new law violated Arizona's constitutional prohibition against special laws because the board composition of less populous counties was not changed. Reversing the intermediate court of appeal, the Arizona Supreme Court rejected the plaintiffs' argument, holding that the special laws provision of the state constitution was not violated. ***Gallardo v. State*, 236 Ariz. 84, 336 P.3d 717 (2014).**

Challenge to Long Waiting Lines Caused by Polling Place Consolidation: The Lawyers' Committee's lawsuit challenged the reduction of polling places in Maricopa County after severe cut-backs disenfranchised voters in the 2016 presidential preference primary because of extremely long lines, hours-long wait-times and a host of election administration problems. Maricopa County is Arizona's most populous county and was a covered jurisdiction under Section 5 of the VRA with approximately 60 percent of the state's minority voters residing in the county. In February 2016, the county slashed the total number of polls from 211 in 2012 to only 60. With this reduction, there was approximately one polling place for every 21,000 voters in Maricopa County as compared to one polling place for every 1,500 voters in the rest of the state. 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. ***Huerena v. Reagan, Superior Court of Arizona*, Maricopa County, CV2016-07890 (D. Ariz. July 7, 2016).**

Suit to Enjoin State's Two-Tier Voter Registration Process: Arizona created a two-tier voter registration process in the wake of the Supreme Court's decision in *ITCA v. Arizona*, 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. The parties settled the matter with an agreement that allows the state to continue to require proof of citizenship to register to vote in state elections, 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. ***League of United Latin Am. Citizens Arizona v. Reagan***, **No. CV17-4102 PHX DGC, 2018 WL 5983009 (D. Ariz. Nov. 14, 2018)**.

Election Day Suit Seeking Extensions of Polling Hours in Maricopa County: On Election Day, November 6, 2018, Plaintiffs, in coordination with the Lawyers' Committee's Election Protection program, filed an emergent action, seeking an extension of the voting hours at all of Maricopa County's mega voting centers, which had suffered technology problems leading to the sites being closed for significant periods of time. The state court denied the request for emergency relief. ***Arizona Advocacy Network v. Maricopa Co. Bd. of Supervisors, et al.*, No. cv-20-8-013943 (Superior Court of Ariz., County of Maricopa, Nov. 6, 2018).**

California

Successful Challenge to Decision by Secretary of Commerce to Add Citizenship Question to 2020 Census: On April 17, 2018, the City of San Jose and the Black Alliance for Just Immigration, represented by the Lawyers' Committee and other counsel, filed a Complaint in the Northern District of California under the Enumeration Clause of the Constitution and the Administrative Procedure Act seeking an injunction against the March 26, 2018 decision by Secretary of Commerce Wilbur Ross to add a citizenship question to the 2020 Census questionnaire. The decision was made, ostensibly, in response to a request by the Department of Justice, which professed a need for the question in order to allow it to prosecute actions under Section 2 of the Voting Rights Act. The Complaint alleged that the addition of the question would diminish the quality and accuracy of the Census count, further decrease the undercount of minority and immigrant populations, and was arbitrary and capricious and contrary to law. After trial, on March 6, 2019, the District Court ruled that the Secretary's decision was arbitrary and capricious under the APA and violated the Enumeration Clause. On June 27, 2019, in a companion case, *U.S. Dept. of Commerce v. Ross*, the Supreme Court issued a decision affirming the finding that the Secretary had violated the APA because he had contrived false reasons for his decision, leading to entry of final judgment in the California case, permanently enjoining Ross from adding the question to the Census. ***City of San Jose, et al. v. Wilbur Ross, et al.* (N.D. Ca., No. 3:18-cv-2279-RS).**

Florida

Suit Seeking Extension of Registration Deadline for Counties Affected by Hurricane Michael: In the wake of the devastation wreaked by Hurricane Michael, plaintiffs sought an emergency extension of the voter registration deadline in counties that had been particularly affected; the application was denied. ***New Florida Majority Educ. Fund, et al. v. Detzner*, No. 4:18-cv-00466-RH-CAS (N.D. Fla., October –, 2018).**

Georgia

Challenge to Georgia's Electronic Ballot System as Insecure and Not Allowing Voters To Check Their Vote: 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. On August 9, 2019, the district court preliminarily enjoined the state's use of their 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. ***Donna Curling, et al. v. Brian Kemp, et al.* No. 1:17-cv-02989-AT (N.D. Ga., August 8, 2017).**

First State Challenge to Georgia's "Exact Match" Law Which Disproportionately Disenfranchises African American, Latino and Asian American Voters: The Lawyers' Committee brought this action in state court, seeking a writ of mandate compelling county registrars to process voter registration applications submitted by its client the New Georgia Project. The state had been cancelling voter registration applications which failed to exactly match Social Security or Georgia Driver's Service Records, unless the applicants contacted their county registrars to resolve the non-match within 40 days. Compounding the problem, county registrars would stop processing all voter registration applications for 90 days from the close of voter registration for state primary elections at the end of April until runoffs were over in August, the height of voter registration drives. As a result, the controverted applications were not appearing on any active or pending voter registration lists. After the county registrars starting processing the applications again in August, registrants began seeing their applications cancelled right before the close of voter registration for the general election on Election Day. The court denied the petition for a writ of mandate, ruling that state law did not

require counties to process voter registration forms on any particular deadline other than by Election Day. ***Third Sector Development, et al. v. Kemp, et al., Fulton County Superior Court*, Case No. 2014CV252546, 2014 WL 5113630 (October 10, 2014)**

First Federal Challenge to Georgia's "Exact Match" Law Which Disproportionately Disenfranchises African American, Latino and Asian American Voters: This suit, brought by the Lawyers' Committee and a coalition of civil rights organizations, alleged that Georgia's "exact match" voter registration process, 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, violated Section 2 of the VRA, the NVRA, and imposed an unconstitutional burden on the right to vote in violation of the First and Fourteenth Amendments. Under the "exact match" process, more than 40,000 applicants were in "pending" status in 2016 because the information on their voter registration applications did not exactly match the DDS or SSA database information. The suit was settled when the State agreed to allow all such persons to vote, upon showing acceptable voter ID at polling places. ***Georgia State Conference of NAACP, et al., v. Brian Kemp, et al.* (N.D. Ga. No. 2:16-cv-00219-WCO, September 14, 2016).**

Second Challenge to Georgia's "Exact Match" Law Which Disproportionately Disenfranchises African American, Latino and Asian American Voters and Naturalized Citizens: This is the second challenge to Georgia's "exact match" practice. After the Georgia legislature passed a statute again establishing an "exact match" system, the Lawyers' Committee and a coalition of civil rights organizations filed suit in the U.S. District Court for the Northern District of Georgia against then Georgia Secretary of State, Brian Kemp, alleging that Georgia's "exact match" voter registration process, violated Section 2 of the VRA, the NVRA, and imposed an unconstitutional burden on the right to vote in violation of the First and Fourteenth Amendments. Under the "exact match" process, more than 53,000 applicants were in "pending" status in 2018 because the information on their voter registration applications did not exactly match the DDS or SSA database information or because the process inaccurately flagged United States citizens as potential non-citizens. On November 2, 2018, the Court partially granted Plaintiffs' motion for preliminary relief, ordering that Georgians inaccurately flagged as non-citizens could vote using a regular ballot if they provided proof of citizenship to a poll manager rather than a deputy registrar (who might not be at the polling station), when voting at the polls for the first time. The Georgia legislature subsequently 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 flags United States citizens as non-citizens. The litigation is pending. ***Georgia Coal. for People's Agenda, Inc. v. Kemp,*** **347 F. Supp. 3d 1251 (N.D. Ga. 2018).**

Challenge to Georgia's Rejection of Absentee Ballots Based upon Alleged Signature Matching and Immaterial Errors or Omissions: On October 23, 2018, the Lawyers' Committee joined lawsuits challenging the state'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. ***Martin v. Kemp*****, No. 18-14503-GG (N.D. Ga. 2018).**

Challenge to Georgia's Unlawful Registration Scheme Relating to Federal Runoff Elections: In this case, the Lawyers' Committee challenged Georgia's runoff election voter registration scheme as a violation of NVRA. Under Georgia law, eligible Georgians were required to register to vote on the fifth Monday before a general or primary election in order to be eligible to vote in a runoff election if no candidate received a majority of the vote. The runoff election would generally be held about two months after the general or primary election As a result, Georgians would be required to register to vote approximately three months before a runoff election in order to participate in that election. Under Section 8 of the NVRA (52 U.S.C. § 20507(a)(1)), states are prohibited from setting voter registration deadlines in excess of thirty days before a federal election. Thus, Georgia's runoff election voter registration scheme violated this provision of the NVRA and the District Court granted a preliminary injunction enjoining the state from using the longer deadline ahead of the Georgia Sixth Congressional Runoff Election in June 2017. Subsequently, the parties settled the matter with the Secretary of State agreeing not to enforce a voter registration deadline that violated Section 8 of the NVRA. ***Georgia State Conference NAACP v. Georgia*****, No. 1:17-CV-1397-TCB (N.D. Ga. May 4, 2017).**

Suit Challenging State Legislative Redistricting: Civil rights organizations and voters, represented by the Lawyers' Committee, filed suit in the United States District Court for the Northern District of Georgia, challenging the State legislature's post-*Shelby* 2015 redistricting of two legislative districts as racial and partisan gerrymanders. The Plaintiffs alleged the legislature targeted African American population in drawing the districting plans to increase the electoral advantage of white Republicans as the districts were becoming more competitive for Black Democrats. After African American candidates were elected to seats in both of the challenged districts in November 2018, the parties agreed to voluntary dismissals of the actions. ***Georgia State Conference of NAACP v. Georgia*, No. 1:17-CV-1427 (N.D. Ga. 2017).**

Challenge to Purge of Mostly Black Voters in Hancock County: Plaintiffs, represented by the Lawyers' Committee, filed this action on November 3, 2015 in the U.S. District Court for the Middle District of Georgia. This case challenged the removal of 53 voters, 51 of whom were African Americans, from the voter rolls of a small, predominately Black county. The purge occurred just prior to a hotly contested election in Sparta, the largest city in Hancock County, and white candidate was elected mayor for the first time in decades. The case was brought under Section 2 of the VRA and Section 8 of the NVRA. Immediately, the District Court directed Defendants to restore qualified purged voters to the registration rolls or show cause why they would not do so. As a result, 17 voters were restored to the rolls; two others would have been restored, but had died in the interim; and eight voters were placed into inactive status, but remained eligible to vote by producing proof of their residency when requesting a ballot. The parties subsequently mediated the case, which resulted in a settlement in which the Defendants agreed to comply with the NVRA before removing anyone from the voter rolls and to be subject to monitoring by a court appointed examiner. On March 30, 2018, the Court granted the parties' Joint Motion for Entry of Consent Decree. Compliance with the Consent Decree is being actively monitored by the Court appointed examiner. ***Georgia State Conference of NAACP v. Hancock Cty. Bd. of Elections & Registration*, No. 5:15-CV-00414 (CAR) (M.D. Ga. 2015).**

Vote Dilution Lawsuit Challenging District Plans for Gwinnett County: Plaintiffs, represented by the Lawyers' Committee and other civil rights organizations, filed a vote dilution suit under Section 2 of the VRA challenging the districting plans for the County Board of Commissioners and Board of Education. At the time the lawsuit was filed, no African American, Latino or Asian American candidates had ever won election to these boards, despite the fact that Gwinnett

County is considered to be one of the most racially diverse counties in the Southeastern United States. After two long-term incumbents chose not to run for re-election to the School Board in the 2018 mid-term election, and with the minority population of the county continuing to grow, African American and Asian American candidates were finally elected to the County Commission and an African American candidate was elected to the School Board for the first time in the county's history. Following these electoral successes, the parties agreed to a voluntary dismissal of the litigation. ***Ga. State Conference of the NAACP v. Gwinnett Cty. Bd. of Registrations & Elections*, No: 1:16-cv-02852 (N.D. Ga. 2016).**

Suit to Extend Registration Period for Communities Hard-Hit by Hurricane Matthew: The Lawyers' Committee sought emergency relief to extend the voter registration for Chatham County, Georgia residents in the wake of Hurricane Matthew. The storm had resulted in the closing of County government offices for what would have been the last six days of the voter registration period. Despite requests to extend the deadline, both Governor Nathan Deal and Secretary of State Brian Kemp, refused to extend the deadline for Chatham County residents. Chatham County, which includes the city of Savannah, has over 200,000 voting age citizens, of whom more than 40 percent are African American or Latino. It was hit particularly hard by the devastating storm. Almost half of its residents lost power, and it was one of six counties subject to a mandatory evacuation order. Following a hearing on the plaintiffs' motion for a preliminary injunction on October 14, 2016, the Court ordered that the voter registration deadline for Chatham County residents be extended from October 11, 2016 to October 18, 2016. As a result of this extension, approximately 1,418 additional Chatham County residents registered in time to be eligible to vote in the November 2016 general election. Approximately 41 percent of these new registrants are African American, 4.5 percent are Latino and 38.6 percent are white. ***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).**

Challenge to District Lines of Emanuel County School Board as Dilutive of Black Votes: Plaintiffs, represented by the Lawyers' Committee, alleged that the district boundaries for the Emanuel County School Board violated Section 2 of the VRA. The complaint alleged that the then current map of seven School Board districts impermissibly diluted the voting strength of African American voters by "packing" them into one district. African Americans comprises 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. ***Georgia State Conference of NAACP, et al., v. Emanuel County Board of Commissioners, et al.,*** **(S.D. Ga., No. 6:16-cv-021, February 23, 2016).**

Election Day Suits to Extend Voting Hours: Plaintiffs, working with the Lawyers' Committee's Election Protection program, filed two suits on Election Day 2018 to extend voting hours in precincts with large African-American populations, that had suffered technology failures, resulting in extraordinarily long lines. The court granted hours' long extensions at the Booker T. Washington and Morehouse College Archer Auditorium Precincts, and Pittman Park Recreation Center precincts. ***Georgia State Conference of NAACP, et al. v. Fulton County Bd. of Reg. & Elections*** **(Superior Ct. of Fulton County, State of Georgia, Nov. 6, 2018).**

Indiana

Election Day Suit to Extend Voting Hours: Plaintiffs, in a suit coordinated by the Lawyers' Committee's Election Protection program, unsuccessfully sought emergent relief to extend the voting hours in Johnson County, Indiana, because polling places had run out of paper ballots. ***Dan Newland v. Johnson Co., et al.*****, (Johnson County Superior Court, State of Indiana, November 6, 2018).**

Kansas

Defense against Attempt to Change Federal Registration Form re Proof of Citizenship: The Lawyers' Committee 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. ***Kobach v. U.S. Election Assistance Commission*****, 772 F. 3d 1183 (10th Cir. 2015).**

Louisiana

Challenge to State's Districting Plan for Electing Justices to Supreme Court: The Lawyers' Committee's Complaint alleges that the method of electing members of the Louisiana Supreme Court violates the Voting Rights Act. The suit

maintains that Louisiana's electoral map for electing justices denies black voters an equal opportunity to elect justices of their choice. Louisiana's population is 32% African American but just one of state's seven Supreme Court districts is majority-black in population. As a result, six of the seven justices on the most powerful court in the state are white. The suit, which highlights that the state's Supreme Court districts have not been redrawn since 1999, alleges that a second majority-black district must be drawn to address the harm to black voters. ***Louisiana State Conference of the NAACP, et al., v. State of Louisiana, et al.*** **(M.D. La., No. 3:19-cv-00479-JWD-EWD, July 23, 2019).**

Mississippi

Challenge to Redistricting of State Senate District: On July 9, 2018, 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 court's decision. ***Thomas v. Bryant*****, 919 F.3d 298 (5th Cir. 2019).**

Suit Challenging State's Restrictive Absentee Ballot Procedures: On November 21, 2018, Plaintiffs, represented by the Lawyers' Committee, filed a complaint challenging, on federal constitutional right to vote grounds, Mississippi's unique combination of requiring notarization of both the absentee ballot application and the ballot itself, in addition to a deadline of receipt of the ballot the day before election day. Plaintiffs also sought emergency relief to compel the counting of ballots post-marked by election day (November 27) in the senatorial run-off, where voters had only 9 days – including Thanksgiving weekend – to apply for, obtain, and cast their absentee ballots. The court denied relief on November 27, 2019 on grounds that it was too close to the election to order relief. The case is still pending. ***O'Neil v. Hosemann*****, No: 3:18-cv-00815 (S.D. Miss. Nov. 27, 2018).**

New York

Suit to Restore Voting Rights to New Yorkers Who Were Removed from Poll Books in Violation of Federal Law: The Lawyers' Committee and another civil rights organization filed suit to restore the voting rights of millions of New Yorkers ahead of the 2018 election. Plaintiffs alleged that certain eligible but "inactive" voters are improperly removed from poll books throughout New York State in violation of the NVRA. Plaintiffs contend that the removal of inactive voters from the poll books disproportionately impacts voters of color. The litigation is continuing. ***Common Cause/New York v. Brehm,*** **Case No. 1:17-cv-06770 (S.D.N.Y 2017).**

Suit Challenging Purge of New York City Voters: 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. Plaintiffs sought the restoration of all purged voters to the registration list, and also that the NYCBOE count all affidavit ballots cast by these individuals in the November 2016 election. Earlier in 2016, 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. Shortly before the November 2016 election, the parties reached an agreement under which the NYCBOE agreed to provide various forms of notice to poll workers and voters concerning the requirement that all voters who believed they were registered were to be offered an affidavit ballot on Election Day. The NYCBOE also agreed to send absentee ballots to two individual plaintiffs who had previously been purged from the registration list. After further negotiations and the 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 to comply with the NVRA before removing anyone from the rolls, and to subject itself to a four-year auditing and monitoring regimen. The Consent Decree was approved by the Court in December 2017 and is being monitored by the plaintiffs. ***Common Cause/New York v. Board of Elections in City of New York*** **(E.D.N,Y., No. 1:16-cv-06122-NGG-VMS).**

North Carolina

Challenge to At-Large Method of Electing Jones County Commissioners as Dilutive of Black Voters' Rights: Plaintiffs, represented by the Lawyers' Committee, challenged the at-large scheme of electing members to the Jones County,

NC Board of Commissioners under Section 2 of the Voting Rights Act. Due to the at-large method of electing members to the Jones County Board of Commissioners, which diluted the voting strength of African American voters, no African American candidate had been elected to the Jones County Board of Commissioners since 1998. The parties eventually 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. ***Hall v. Jones Cty. Bd. of Commissioners*, No. 4:17-cv-00018 (E.D.N.C. Aug. 23, 2017).**

Suit Alleging Violation of Sections 5 and 7 of NVRA: Since 2013, North Carolina has seen a precipitous drop in the number of voter registration applications offered and collected at public assistance agencies and DMV offices across the state. In particular, the drop in public assistance registration significantly and detrimentally affects low income voters of color. Suit was filed in December 2015, by the Lawyers' Committee and other civil rights organizations, alleging that North Carolina was violating Sections 5 and 7 of the NVRA, in not adequately making assistance to register to vote available to people who visit motor vehicle and public assistance agencies. The case settled in 2018, with substantial improvements made at both DMV and NC social service agencies in how voter registration applications are offered and processed. ***Action NC, et al. v. Kim Westbrook Strach, et al.* (M.D.N.C., No. 1:15-cv-01063).**

Pennsylvania

Election Day Challenge to Acceptance of Absentee Ballots: On Election Day, 2018, Plaintiff, coordinating with the Lawyers' Committee's Election Protection program, obtained a court order from the Commonwealth of Pennsylvania allowing her to vote her absentee ballot which had been rejected because of Pennsylvania's overly-restrictive time requirements, due to no fault of Plaintiff.

Challenge to Absentee Ballot Deadline: On November 13, 2018, Plaintiffs, represented by the Lawyers' Committee and other civil rights organizations, filed a challenge under Pennsylvania's and the federal constitutions, alleging that Pennsylvania's requirement that absentee ballots must be received by the Friday before election day violates the right to vote. The suit is pending. ***Cassandra Adams Jones, et al. v. Robert Torres, et al.* (Commonwealth Court of Pennsylvania, No. 717 MD 2018, Nov. 13, 2018).**

South Dakota

Challenge to Lack of Access for Native Americans to Polling Place Locations: This suit, brought by the Lawyers' Committee in 2014, challenged the failure of Jackson County to maintain a voting and registration location sufficiently convenient to the Pine Ridge Reservation of the Oglala Sioux Tribe. After suit was filed, the County passed a resolution to open a location in proximity to the Reservation for federal elections over the next four years. The suit was subsequently dismissed as moot. ***Thomas Poor Bear, et al. v. The County of Jackson, et al.,* (D. S.D.No. 5:14-cv-05059-KES).**

Tennessee

Suit Challenging New Law Restricting Voter Registration Activity: The Lawyers' Committee, representing several civil rights organizations, filed suit the day the Governor signed into law a statute that imposes severe restrictions on voter registration activity by community groups and third parties and includes 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. The case is pending. ***Tennessee State Conference of the N.A.A.C.P. v. Hargett*, Case No. 3:19-cv-00365 (M.D. Tenn. 2019).**

Texas

Challenge to Restrictive Voter ID Law: This Was a Federal court action, brought by several civil rights organizations, including the Lawyers' Committee, and the Department of Justice, challenging the Texas voter ID law under Section 2 of the VRA and the U.S. Constitution. In October 2014, the district judge ruled in Plaintiffs' favor on all claims and blocked the law, holding that it violated Section 2 of the VRA, constituted an unconstitutional burden on the right to vote, amounted to a poll tax, and was motivated in part by a racially discriminatory purpose. In July 2016, the Fifth Circuit, siting *en banc*, affirmed the district court's finding of discriminatory effect under Section 2, and remanded the case to the district court for further fact-finding on the discriminatory intent claim. The district court entered an interim remedial order that allowed anyone to vote without the required ID. On April 10, 2017, the district court issued a decision re-affirming its prior determination that SB 14 was passed, at least in part, with a discriminatory intent. On June 1, 2017, Texas passed a new law, SB 5, which it claimed remedied the effects of SB 14. While SB 5

shares provisions in common with the court-ordered interim remedy, there are aspects of concern, including a harsh felony penalty (up to two years of imprisonment) for voters who inappropriately use the affidavit process for voting in-person without an acceptable photo ID. On August 23, 2017, the court granted declaratory relief, holding that SB 14 violated Section 2 of the VRA and the 14th and 15th Amendments to the U.S. Constitution. The court enjoined SB 14 and SB 5, finding that the new law "perpetuates SB 14's discriminatory features." On April 27, 2018, the Fifth Circuit issued an opinion "reversing and rendering" the district court's order for permanent injunction and further relief, finding that the district court had abused its discretion, and further finding that SB 5 constituted an effective remedy "for the only deficiencies in SB 14," and that there was no equitable basis for subjecting Texas to ongoing federal election scrutiny under Section 3(c) of the Voting Rights Act. ***Veasey v. Abbott*, 888 F.3d 792 (5th Cir. 2018).**

Challenge to Attempted Purge of Naturalized Citizens: In late January 2019, David Whitley, Texas' Secretary of State, 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 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. Naturalized citizens are entitled to full voting rights under Constitution. Voting rights advocates, including the Lawyers' Committee, filed lawsuits challenging the purging of voters based upon this flawed process. The case was eventually settled after the U.S. District Court in Texas granted a motion for preliminary injunction, enjoining the removal of voters from the rolls based upon this flawed process. ***Texas League of United Latino American Citizens v. Whitley*, No. 5:19-cv-00074 (W.D. Tex. February 27, 2019).**

Challenge to At-Large Election of Texas High Courts as Diluting Votes of the Latinx Population: The Lawyers' Committee brought this suit challenging the at-large voting districts for the Texas Supreme Court and the Texas Court of Criminal Appeals, as unlawfully diluting the votes of Latinx voters, who, despite comprising a sizeable percentage of Texans, had not elected a candidate of their choice to either of these courts for decades. Although the court found, after trial, that plaintiffs had met the basic standards for a violation of Section 2 of the Voting Rights Act, it denied relief on the primary basis that partisanship, rather than race, explained the election results. ***Lopez, et al. v. Abbott*, (S.D. Tex., 2:16-cv-00303, July 20, 2016).**

Utah

Suit Challenging County's Failure to Provide Effective Language Assistance and In-Person Early Voting Sites for Navajo Nation Voters: San Juan County, Utah is home to a substantial Native American population. The County moved to all-mail balloting in 2014. Coupled with a lack of sufficient in-person early voting sites serving the Navajo Nation's voters, Plaintiffs, represented by the Lawyers' Committee and other civil rights organizations, argued that the county failed to provide effective language assistance to its Native American population. Following a period of intense and sometimes contentious litigation, the parties reached a settlement in which the county agreed to 1) provide in-person language assistance on the Navajo reservation for the 28 days prior to each election through the 2020 general election; 2) maintain three polling sites on the Navajo reservation for election day voting, including language assistance; and 3) to take additional action to ensure quality interpretation of election information and materials in the Navajo language. The settlement is being monitored by the plaintiffs. ***Navajo Nation Human Rights Comm'n v. San Juan County*, 216CV00154JNPBCW, 2017 WL 3976564, at *1 (D. Utah Sept. 7, 2017).**

Virginia

Suit to Extend Registration Deadline: In 2016, Virginia's state online voter registration platform crashed during the last days of voter registration, leading up to the October 17th voter registration deadline. The Lawyers' Committee, working with local civil rights groups, filed suit in the U.S. District Court for the Northern District of Virginia, after the Commonwealth had refused a request to extend the time for registration. After a hearing, the court ordered Virginia to extend the deadline until midnight October 21. As a result, approximately 28,000 Virginians registered to vote, who otherwise would not have been able to. ***New Virginia Majority Education Fund, et al. v. Virginia Department of Elections, et al.,* No. 1:16-cv-013190CMH-MSN, N.D.VA, Alexandria Division.**

Washington, D.C.

Challenge to Decision by the Election Assistance Commission's Executive Director to Include Proof of Citizenship Requirement on Federal Registration Form Instructions: In January 2016, EAC 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 Court of Columbia denied Plaintiffs' motion for a preliminary injunction. The parties have fully briefed cross-motions for summary judgment and the action remains pending. ***League of Women Voters of United States v. Newby*, 838 F.3d 1 (D.C. Cir. 2016).**

Challenge to Presidential Advisory Commission on Election Integrity: On May 11, 2017, President Trump established the Presidential Advisory Commission on Election Integrity, to study the registration and voting processes used in Federal elections, including those that "could lead to improper voter registrations and improper voting, including fraudulent voter registrations and fraudulent voting." Exec. Order 13799. The Commission was chaired by Vice President Pence, but its Vice-Chair is Kansas Secretary of State Kris Kobach, a known advocate of laws and regulations that have the effect of suppressing votes, particularly those of minority voters. Other members of the Commission included Hans Von Spakovsky, Christian Adams, and Ken Blackwell, all advocates of similar laws and regulations. On June 28, 2017, the Commission held a meeting after which Kobach sent a letter to every state requesting the production of information relating to every voter in the nation, including political affiliation and the last four digits of their social security numbers. This meeting was not open to the public. The Commission also announced that its next meeting would be held on July 19, 2017, but would be open to the public only via video streaming. On July 10, 2017, the Lawyers' Committee filed an action on its own behalf, seeking production of all Commission records under Section 10 of the Federal Advisory Committee Act, simultaneously seeking a temporary restraining order that would require the Commission to produce its records prior to the July 19 meeting, and would open that meeting to in-person public participation. On July 18, 2017, Judge Kollar-Kotelly issued an opinion denying the TRO application on the bases that (1) the Commission had submitted an affidavit promising to make all documents public; (2) there was no requirement that the documents be produced prior to the July 19 meeting; and (3) there was no requirement for in-person public participation. The Commission proceeded with its meeting on July 19. On July 21, Plaintiff filed motions on the basis that the Commission had not fulfilled its commitment to produce all records and documents. After reviewing the briefing, the Court set a hearing date of August 30, at which time DOJ apologized on behalf of its client, the Commission, for not disclosing all the documents it had promised to disclose. The Court ordered that the Commission prepare a Vaughn Index, listing all documents it is withholding from production and that the parties meet and confer to discuss the specifics and timing of the Vaughn Index. On September 29, the federal government provided Plaintiff with

its Vaughn Index, which indicated, among other things, that there were communications between some of the members of the Commission on substantive matters that had not been disclosed to the public. The Lawyers' Committee then filed a motion to compel compliance with the court's prior order, which is fully briefed and pending decision. On January 3, 2018, President Trump announced that he was dissolving the Commission. The suit was subsequently dismissed. ***Lawyers' Committee for Civil Rights Under Law v. Presidential Advisory Commission on Election Integrity, et al.*, D.D.C. No. 1:17-cv-01354-CKK, July 10, 2017.**

Presidential Advisory Commission on Election Integrity – FOIA: On January 26, 2018, the Lawyers' Committee filed a complaint on its own behalf in the District Court for the District of Columbia, seeking compliance by the Department of Justice and the Department of Homeland Security with FOIA requests for documents relating to the Presidential Advisory Commission on Election Integrity. The matter is pending. ***Lawyers' Committee for Civil Rights Under Law v. U.S. Dept. of Justice*, D.D.C. No. 1:18-cv-00167-EGS, January 26, 2018.**

Appendix B – Summary Table of Cases which the Lawyers' Committee for Civil Rights Under Law's Voting Rights Project has participated in since *Shelby County v. Holder*						
Case Name	**Year Filed**	**State**	**Result**	**Opposing Covered Jurisdiction**	**Challenging Voting Change**	**Section 2 Claim**
Alabama State Conference of the NAACP v. State of Alabama	2017	Alabama	Pending	Y	N	Y
State of Alabama v. US Dept. of Commerce	2018	Alabama	Pending	Y	N	N
Gallardo v. State of Arizona	2014	Arizona	Negative	Y	Y	N
Huerena v. Reagan, Superior Court of Arizona	2016	Arizona	Positive	Y	Y	N
League of United Latin American Citizens of Arizona v. Reagan	2018	Arizona	Positive	Y	Y	N
Arizona Advocacy Network v. Maricopa County Board of Supervisors	2018	Arizona	Negative	Y	N	N
City of San Jose v. Wilbur Ross	2018	California	Positive	N, Federal Gov't	N	N
New Florida Majority Education Fund v. Detzner	2018	Florida	Negative	No	N	N
Donna Curling v. Brian Kemp	2017	Georgia	Positive	Y	N	N
Georgia State Conference of the NAACP v. Brian Kemp	2016	Georgia	Positive	Y	Y	Y (+)
Georgia Coalition for the People's Agenda v. Brian Kemp	2018	Georgia	Positive	Y	Y	Y (+)
Martin v. Kemp	2018	Georgia	Positive	Y	N	N
Georgia State Conference of the NAACP v. Georgia (Runoff Elections)	2017	Georgia	Positive	Y	N	N
Georgia State Conference of the NAACP v. Georgia (Redistricting)	2017	Georgia	Positive	Y	Y	N
Georgia State Conference of the NAACP v. Hancock County Board of Elections and Registration	2015	Georgia	Positive	Y	Y	Y (+)
Georgia State Conference of the NAACP v. Gwinnett County Board of Registration and Elections	2016	Georgia	Positive	Y	N	Y

Case Name	Year Filed	State	Result	Opposing Covered Jurisdiction	Challenging Voting Change	Section 2 Claim
Georgia Coalition for the People's Agenda v. John Nathan Deal	2016	Georgia	Positive	Y	N	Y
Georgia State Conference of the NAACP v. Emanuel County Board of Commissioners	2016	Georgia	Positive	Y	N	Y
Georgia State Conference of the NAACP v. Fulton County Board of Registrations and Elections	2018	Georgia	Positive	Y	N	N
Third Sector Development, et al. v. Kemp, et al.	2014	Georgia	Negative	Y	N	N
Dan Newland v. Johnson County	2018	Indiana	Negative	N	N	N
Kobach v. U.S. Election Assistance Commission	2013	Kansas	Positive	Y	N	N
Louisiana State Conference of the NAACP v. State of Louisiana	2019	Louisiana	Pending	Y	N	Y
Thomas v. Bryant	2018	Mississippi	Positive	Y	N	Y
O'Neil v. Hosemann	2018	Mississippi	Pending	Y	N	N
Common Cause New York v. Brehm	2017	New York	Pending	Y	N	N
Common Cause New York v. Board of Elections in the City of New York	2016	New York	Positive	Y	Y	N
Hall v. Jones County Board of Commissioners	2017	North Carolina	Positive	N	N	Y
Action North Carolina v. Kim Westbrook Strach	2015	North Carolina	Positive	Y	N	N
Election Day Challenged to Acceptance of Absentee Ballots	2018	Pennsylvania	Positive	N	N	N
Cassandra Adams Jones v. Robert Torres	2018	Pennsylvania	Pending	N	N	N
Thomas Poor Bear v. The County of Jackson	2014	South Dakota	Positive	N	N	Y
Tennessee State Conference of the NAACP v. Hargett	2019	Tennessee	Pending	N	Y	N
Veasey v. Abbott	2018	Texas	Positive	Y	Y	Y (+)
Texas League of United Latin American Citizens v. Whitley	2019	Texas	Positive	Y	Y	Y (+)

Case Name	Year Filed	State	Result	Opposing Covered Jurisdiction	Challenging Voting Change	Section 2 Claim
Lopez v. Abbott	2016	Texas	Negative	Y	N	Y
Navajo Nation Human Rights Commission v. San Juan	2017	Utah	Positive	N	Y	Y (+)
New Virginia Majority Education Fund v. Virginia Department of Elections	2016	Virginia	Positive	Y	N	N
League of Women Voters of United States v. Newby	2016	Washington, DC	Positive	N, Federal Gov't	Y	N
Lawyers' Committee for Civil Rights Under Law v. Presidential Advisory Commission on Election Integrity	2017	Washington, DC	Positive	N, Federal Gov't	N	N
Lawyers' Committee for Civil Rights Under Law v. US Dept. of Justice	2018	Washington, DC	Pending	N, Federal Gov't	N	N

Legend
Case Name = name of the case
Year Filed = year in which case was filed
State = State of the court the case was filed in, including the federal court
Result
Positive = positive change resulting from case if representing plaintiff, no change if representing defendant
Negative = no change resulting from case if representing plaintiff, change if representing defendant
Pending = case still pending with no positive or negative results yet
Opposing Covered Jurisdiction
Y= an opposing party was covered under Section 5,
N = no opposing party was covered under Section 5,
N, Fed Gov't = the federal government is the opposing party
Challenging Voting Change
Y = Yes, challenged voting change
N = No, did not challenge voting change
Section 2 Claim
Y = Only a Section 2 claim
Y (+) = Section 2 is one of multiple clains
N = no Section 2 claim