WRITTEN STATEMENT OF
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For a Hearing on

Evidence of Current and Ongoing Voting Discrimination

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Subcommittee on the Constitution, Civil Rights, and Civil Liberties

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Introduction

With approximately 3 million members, activists, and supporters, the ACLU is a nationwide organization that advances its mission of defending the principles of liberty and equality embodied in our Constitution and civil rights laws. For nearly 100 years, the ACLU has been our nation's guardian of liberty, working in courts, legislatures, and communities to defend and preserve the Constitution and laws of the United States. The ACLU's Voting Rights Project, established in 1965, has filed more than 300 lawsuits to enforce the provisions of our country's voting laws and Constitution, including the Voting Rights Act of 1965 (VRA) and the National Voter Registration Act of 1993 (NVRA).

In my capacity as Director of the ACLU's Voting Rights Project, I supervise the ACLU's voting rights litigation, which focuses on ensuring that all Americans have access to the franchise, and that everyone is represented equally in our political processes. In addition to my work at the ACLU, I serve as an adjunct professor at NYU School of Law, and am widely published on voting rights issues, including in the *Yale Law Journal Forum* and the *Harvard Civil Rights-Civil Liberties Law Review*.

More than a century ago, the Supreme Court famously described the right to vote as the one right that is preservative of all others.[1] We are not truly free without self-government, which requires a vibrant participatory democracy, in which everyone is fairly and equally represented.

My written statement will address current conditions with respect to racial discrimination in voting since the Supreme Court's decision in *Shelby County v. Holder*.[2] In her dissent in that case, Justice Ruth Bader Ginsburg warned that the Court's decision to release states and counties with the worst histories and recent records of voting discrimination from federal "preclearance"—that is, the obligation to obtain approval from the Department of Justice or a federal court before implementing any changes to voting laws and practices—was "like throwing away your umbrella in a rainstorm."[3] And sure enough, after the decision, the downpour came. *Shelby County* unleashed a wave of voter suppression and other discriminatory voting laws unlike anything the country had seen in a generation.[4] Today, racial discrimination in voting remains a persistent and widespread problem.

But Congress has the power under the Fourteenth and Fifteenth Amendments to adopt strong enforcement legislation to prevent racial discrimination in the voting process at the federal, state, and local levels. Indeed, when Congress acts to address racial discrimination in voting—protecting both the fundamental right to vote and the right to be free from racial discrimination—two rights at the center of the Reconstruction Amendments, which Congress is

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

[2] 570 U.S. 529 (2013).

[3] 570 U.S. at 590 (Ginsberg, J., dissenting).

[4] *See* Dale E. Ho, *Building an Umbrella in A Rainstorm: The New Vote Denial Litigation Since Shelby County*, 127 Yale L.J. Forum 799 (2018).

expressly authorized to enforce—Congress acts at the height of its power.[5] In light of current conditions, this body has not only the authority but the duty to ensure that all Americans are free to exercise the franchise in elections without the taint of racial discrimination.

I will begin with a brief overview of the ACLU's voting rights work, highlighting a few of our most significant cases. I will then describe our recent experience challenging discriminatory voting laws under Section 2 of the Voting Rights Act. While we have brought a number of successful VRA cases since *Shelby County*, these cases have typically taken years rather than months to litigate—and despite our best efforts, numerous elections have been conducted in which *hundreds* of federal, state, and local government officials have been elected under regimes that were later determined to be discriminatory. And once these elections were conducted, there was no way to adequately compensate the victims of discrimination.

Our experience thus highlights the need for stronger voting rights protections contained in the Voting Rights Advancement Act (VRAA)[6]—including a new preclearance process based on current conditions, and a clarified standard for obtaining and sustaining preliminary relief in voting discrimination cases—to block discriminatory voting changes *before* they are implemented, so that they do not irrevocably taint our democracy.

I will then address Section 2 litigation since *Shelby County* more broadly. Briefly, **the frequency of Section 2 litigation at the local level underscores the need for the enhanced notice and transparency requirements of the VRAA**—as changes to voting practices are often more difficult to detect and monitor at the local level. Moreover, **successful Section 2 litigation appears to be concentrated in a handful of states formerly subject to preclearance coverage under Section 5 of the VRA. That indicates that some states continue to have worse conditions with respect to voting discrimination, and justifies the application of particularly strong voting rights protections in those places.**

I. Overview of ACLU Voting Rights Litigation Since *Shelby County*

It is no exaggeration to say that the right to vote is under siege. As the United States Civil Rights Commission recently explained in a report examining "the current and recent state of voter access and voting discrimination for communities of color," the right to vote "has

[5] *See Tennessee v. Lane*, 541 U.S. 509, 561-63 (2004) (Scalia, J., dissenting) ("Giving [Congress's enforcement powers] more expansive scope with regard to measures directed against racial discrimination by the States accords to practices that are distinctively violative of the principal purpose of the [Reconstruction Amendments] a priority of attention that [the Supreme] Court envisioned from the beginning, and that has repeatedly been reflected in [the Court's] opinions.").

[6] Voting Rights Advancement Act of 2019 ("VRAA"), H.R.4. https://www.congress.gov/bill/116th-congress/house-bill/1799/text.

proven fragile and in need of both Constitutional and robust statutory protections. Racial discrimination in voting has been a particularly pernicious and enduring American problem."[7]

Election-related litigation has exploded in recent years. As UC Irvine Law Professor Rick Hasen has noted,

> In the period since 2000, the amount of election-related litigation has more than doubled compared to the period before 2000, from an average of 94 cases per year in the period just before 2000 to an average of 258 cases per year in the post-2000 period. Even compared to the 2012 presidential election cycle, litigation is up significantly; it was twenty-three percent higher in the 2015-16 presidential election season than in the 2011-12 presidential election season, and at the highest level since at least 2000 (and likely ever).[8]

The ACLU has had a very active voting rights docket over the last 6 years. Since *Shelby County* was decided, the ACLU has opened more than 60 new voting rights matters—including cases filed and investigations—and we currently have more than 30 active matters.[9] Between the 2012 and 2016 presidential elections alone, the ACLU and its affiliates won 15 voting rights victories protecting more than 5.6 million voters, in 12 states that collectively are home to 161 members of the House of Representatives and wield 185 votes in the Electoral College.[10]

Some of our most significant cases in recent years include the following:

Department of Commerce v. State of New York[11] **(Census Citizenship Question).** In a case that I argued before the Supreme Court earlier this year, the ACLU represented a coalition of immigrants' rights organizations[12] that successfully challenged the Administration's attempt to add a citizenship question to the 2020 Census. Had the Administration succeeded, the results would have been devastating for the voting rights of communities of color, principles of fair representation, and for our democracy itself.

At the time of trial in 2018, the Administration's own "best" "conservative" estimate was that adding a citizenship question would deter approximately 6.5 million from responding to the

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[7] U.S. Civil Rights Commission, An Assessment of Minority Voting Rights Access in the United States: 2018 Statutory Enforcement Report, Sept. 12, 2018, *available at* https://www.usccr.gov/pubs/2018/Minority_Voting_Access_2018.pdf.

[8] Richard L. Hasen, *The 2016 U.S. Voting Wars: From Bad to Worse*, 26 Wm. & Mary Bill Rts. J. 629, 630 (2018).

[9] These numbers are based on a recent review of the ACLU's internal case management system.

[10] *See* Dale Ho, *Let People Vote: Our Fight for Your Right to Vote in This Election*, Nov. 3, 2016, *available at* https://www.aclu.org/blog/voting-rights/fighting-voter-suppression/let-people-vote-our-fight-your-right-vote-election.

[11] 139 S.Ct. 2551 (2019).

[12] Our clients in the Census litigation included the New York Immigration Coalition, Make the Road New York, the Arab American Anti-Discrimination Committee, and Casa.

Census.[13] That number has only grown; the Administration currently estimates "that including a citizenship question likely would have deterred at least 9 million people, especially among Latinx communities, from taking part in the head count."[14] Because the Census count is used to apportion Congressional seats among states and to draw district lines within them, the massive undercount that would have been caused by the citizenship question would have had dramatic consequences for our democracy. Nine million people represents a population larger than that of New Jersey, our 11th-largest state—if you put them all together in one state, that state would have 12 seats in the House of Representatives and 14 votes in the Electoral College.[15] The court in our case found that if the question were added to the Census, states including Arizona, California, Florida, Illinois, New York, and Texas would all be at risk of losing a seat in Congress.[16] The addition of a citizenship question would also have caused a misallocation of more than $900 billion in federal funds annually.[17]

The Administration claimed that it sought to add a citizenship question to the Census in order to help enforce the Voting Rights Act—despite the fact that this Administration has not sought to enforce the VRA a single time over the last 2 and a half years. The Supreme Court saw through this sham, and, in an opinion by Chief Justice Roberts, found that "the evidence tells a story that does not match the [Voting Rights Act] explanation" given by the Administration, which it rejected as "contrived."[18] The Court then blocked the addition of the citizenship question to the 2020 Census.

In describing the Administration's rationale for adding a citizenship question to the Census as a "contrived" "distraction,"[19] Chief Justice Roberts' opinion for the Court politely said what everyone knows: that the Administration lied when it said that it wanted to add the question to the Census so that it could better enforce the Voting Rights Act.

In fact, after oral argument in the Supreme Court, we discovered the most explicit evidence to date that the Administration's purpose was the opposite of what it claimed: not to protect minority voting rights but to dilute the political representation of communities of color. A portion of an early draft Department of Justice letter requesting the citizenship question

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[13] *New York v. United States Dep't of Commerce*, 351 F. Supp. 3d 502, 579-80, 584 (2019 S.D.N.Y.). grown, to approximately 9 million people. *See*

[14] Hansi Lo Wang, "Push For A Full 2020 Count Ramps Up After Census Citizenship Question Fight," NPR.org, July 31, 2019, *available at* https://www.npr.org/2019/07/31/746508182/push-for-a-full-2020-count-ramps-up-after-census-citizenship-question-fight.

[15] List of states and territories of the United States by population, Wikipedia, *available at* https://en.wikipedia.org/wiki/List_of_states_and_territories_of_the_United_States_by_population#cite_note-5 (citing U.S. Census, *Bureau Annual Estimates of the Resident Population for the United States, Regions, States, and Puerto Rico: April 1, 2010 to July 1, 2018*, Dec. 19, 2018, *available at* https://www.census.gov/newsroom/press-kits/2018/pop-estimates-national-state.html).

[16] *New York*, 351 F. Supp. 3d at 594.

[17] *See id.* at 596-99.

[18] 139 S.Ct. at 2575-76.

[19] *Id.*

ostensibly for VRA enforcement purposes was authored not by DOJ personnel, but by a private gerrymandering consultant who had previously concluded that that adding a citizenship question to the Census was necessary to enable a redistricting strategy that would be, in his words, disadvantageous to Hispanics, and "advantageous to Republicans and Non-Hispanic Whites."[20]

There can be no serious doubt that the plan to add a citizenship question had nothing to do with the VRA, but rather was part of an ongoing scheme to attack the political power of Latinx communities. In that sense, it is emblematic of the attacks on the voting rights of communities of color that we are facing today.

***North Carolina NAACP v. McCrory*[21] (Statewide Voter Suppression Bill).** In 2013, along with the Southern Coalition for Social Justice, we filed a lawsuit representing the League of Women Voters of North Carolina and individual North Carolina voters, in consolidated litigation challenging a sweeping voter suppression bill in North Carolina. Among other things, the bill imposed a strict voter identification requirement, slashed a week of early voting, eliminated same-day registration, eliminated pre-registration, and required the invalidation of ballots cast out-of-precinct.

These changes had a tremendous impact on voter access in the state. In the 2012 presidential election alone approximately 900,000 voters had voted during the eliminated week of early voting; nearly 100,000 voters had registered using SDR; approximately 50,000 had pre-registered; and 7,500 had cast ballots out of precinct.[22] Not only did the 2013 law eliminate these widely-used forms of participation, it also *banned* the use of many commonly-held forms of government-issued photo ID for voting purposes, including North Carolina student IDs, public assistance IDs, and even municipal employee ID cards. The evidence at trial indicated that hundreds of thousands of registered voters in North Carolina did not have one of the forms of ID required for voting purposes. In all, every form of registration or voting curtailed or eliminated by the bill had been disproportionately used by African-American voters; the only form of voting exempted from the ID requirement—absentee voting—was disproportionately used by white voters.[23]

In a unanimous opinion, the U.S. Court of Appeals for the Fourth Circuit found that the law had been enacted with racially discriminatory intent. Rather than describe that ruling, I will largely quote from it:

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[20] *New York v. Dep't of Commerce*, No. 18-cv-2921, ECF No. 595 (S.D.N.Y. May 31, 2019).

[21] *North Carolina State Conference of NAACP v. McCrory*, 831 F.3d 204, 214 (4th Cir. 2016) ("*NAACP v. McCrory").*

[22] *See* Br. for Appellants, *N.C. NAACP v. North Carolina*, 2016 WL 3355830, at *26 (4th Cir. June 14, 2016).

[23] *NAACP v. McCrory*, 831 F.3d at 217, 230.

> "[I]n the immediate aftermath of unprecedented African American voter participation in a state with a troubled racial history and racially polarized voting,"[24] North Carolina adopted its most "comprehensive set of restrictions" on the franchise since 1965, when Congress passed the Voting Rights Act.[25] The new law imposed a strict voter identification requirement permitting only certain forms of ID "which African Americans disproportionately lacked, and eliminated or reduced registration and voting access tools that African Americans disproportionately used."[26] The legislature adopted the law in a secretive and truncated legislative process, with a bill that "came into being literally within days of North Carolina's release from the preclearance requirements of the Voting Rights Act,"[27] and only after the legislature had requested and received "data on the use, by race," of various voting practices—revealing that "all" of these new restrictions "disproportionately affected African Americans."[28]

The Fourth Circuit struck down the challenged provisions of North Carolina's law as unconstitutional, finding that, in enacting these provisions, the North Carolina legislature "target[ed] African Americans with almost surgical precision."[29]

Indeed, recently-discovered documents reveal that, while working for the state of North Carolina, the same gerrymandering consultant who helped devise the plan for the citizenship question, also developed "dozens of intensely detailed studies of North Carolina college students, broken down by race and cross-referenced against the state driver's-license files to determine whether these students likely possessed the proper I.D. to vote."[30]

***Gruver v. Barton*[31] (Florida Poll Tax on Returning Citizens).** We are currently challenging a Florida law that denies the right to vote to returning citizens with past felony convictions based solely on their inability to pay outstanding costs, fines, fees, and restitution (referred to as legal financial obligations, or "LFOs"). Until recently, Florida was one of only three states to disenfranchise people for life for a conviction of any single felony offense. As a result, "[m]ore than one-tenth of Florida's voting population—nearly 1.7 million as of 2016—[could] not vote," and "one in five of Florida's African American voting-age population [could] not vote."[32] In a major victory for democracy, during the 2018 election, Floridians

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[24] *Id.* at 226.

[25] *Id.* at 223.

[26] *Id.* at 217.

[27] *Id.* at 223.

[28] *Id.* at 214.

[29] *NAACP v. McCrory*, 831 F.3d at 214.

[30] David Daley, "The Secret Files of the Master of Modern Republican Gerrymandering," *The New Yorker*, Sept. 6, 2019, *available at* https://www.newyorker.com/news/news-desk/the-secret-files-of-the-master-of-modern-republican-gerrymandering.

[31] Case 1:19-cv-00121-MW-GRJ (N.D. Fla.)

[32] *Hand v. Scott*, 285 F. Supp. 3d 1289, 1310 (N.D. Fla. 2018).

overwhelming approved an amendment to their state constitution automatically restoring the right to vote to returning citizens upon completion of sentence.

But the Florida legislature responded by passing a law that denies voter eligibility to any returning citizens with outstanding LFOs associated with their felony convictions. Our preliminary analysis indicates that, as a result, more than 80% of returning citizens in Florida—people who have fully completed their terms of incarceration, probation, and parole—will be disenfranchised, and that they are disproportionately African Americans.[33] Along with the NAACP Legal Defense Fund and the Brennan Center for Justice, we represent voters who have completed their sentences but would now be unable to vote in Florida, as well various organizations including the NAACP of Florida and the League of Women Voters. A preliminary injunction hearing is scheduled for October.

II. Current Conditions with Respect to Racial Discrimination in Voting: Section 2 Litigation Since *Shelby County*

While there are many different threats to voting rights today—ranging from barriers to registration and voting, to gerrymandering—the Voting Rights Act is targeted at one particular kind of problem: racial discrimination in voting. I will therefore concentrate my testimony on evidence of current conditions with respect to voting discrimination and, in particular, on recent litigation alleging racial discrimination under Section 2 of the VRA.

The high volume of recent litigation under Section 2 of the VRA illustrates the continuing problem of racial discrimination in voting today, and the need for the Voting Rights Advancement Act. In particular, a review of recent Section 2 litigation demonstrates the need for the VRAA's provisions setting forth enhanced notice and transparency requirements, establishing renewed federal oversight of changes to voting laws through a new preclearance formula, and clarifying the standard for preliminary relief in Section 2 litigation.

As an initial matter, I note that the incidence of Section 2 litigation is highly probative of ongoing unconstitutional discrimination—a record of which is generally understood as a prerequisite for congressional action to enforce the guarantees of the Fourteenth Amendment.[34] Although a finding of liability under Section 2 of the VRA does not require a court to find intentional discrimination in violation of the Constitution, the legal test for liability under Section 2's discriminatory results prong is in fact quite similar to the test for intentional racial discrimination in voting outlined by the Supreme Court.[35] Thus, recent Section 2 litigation is at

[33] *Gruver v. Barton*, No. 4:19-cv-00300-RH-MJF, ECF No. 98-1 at 14; ECF No. 98-3 at 33-34 (N.D. Fla. August 2, 2019).

[34] *See City of Boerne v. Flores*, 521 U.S. 507, 530-32 (1997).

[35] The Supreme Court set forth factors for finding unconstitutional intentional racial discrimination in voting based on circumstantial evidence in *Rogers v. Lodge*, 458 U.S. 613, at 619-20 n.8, 624 (1982) ((citations omitted) (citing *Zimmer v. McKeithen*, 485 F.2d 1297, 1305 (5th Cir. 1973)). The factors are similar in many respects to the factors for liability under the discriminatory results prong of Section 2, which the Supreme Court enumerated in *Thornburg v. Gingles*, 478 U.S. 30, 36–37 (1986) (quoting S.

least probative of the extent of ongoing unconstitutional conduct that would merit congressional action to bolster statutory protections against voting discrimination.

A. Recent ACLU Litigation under Section 2 of the VRA

Before turning to Section 2 litigation more generally, I will focus on the ACLU's Section 2 litigation since *Shelby County*, with which I am most familiar.

Our recent Section 2 litigation experience reveals that, although the ACLU has been very successful in blocking discriminatory voting changes (with an overall success rate in Section 2 litigation of more than 80%), **we currently lack the tools needed to stop discriminatory changes to voting laws *before* they taint an election. Discriminatory laws that we have ultimately succeeded in blocking have remained in place for months or even years while litigation has proceeded—time in which elections have been held, and hundreds of government officials have been elected under discriminatory regimes. Stronger protections for voting rights are therefore necessary to prevent voting discrimination.**

Since *Shelby County* was decided, the ACLU and our affiliates have litigated twelve Section 2 cases to judgment, settlement or other resolution. By way of comparison, during the same period, the U.S. Department of Justice—with its vast resources and considerably larger staff—has litigated only four Section 2 cases to completion, and has not filed a single Section 2 case since the beginning of the current Administration.[36] Ten of the ACLU's twelve Section 2

Rep. No. 97-417, at 28–29 (1982), reprinted in 1982 U.S.C.C.A.N. 177, 206–07)). As I have explained elsewhere, under both tests, courts must look to factors including the history of discrimination in the jurisdiction; the presence of devices that enhance the opportunity for discrimination (e.g., majority vote requirements); whether a candidate slating has excluded candidates of color; a lack of responsiveness by elected officials to the needs to communities of color; and whether the challenged voting practice is supported only by a tenuous rationale. *See* Dale Ho, *Minority Vote Dilution in the Age of Obama*, 47 U. Rich. L. Rev. 1041, 1060-62 (2013); Dale E. Ho, Voting Rights Litigation After Shelby County: Mechanics and Standards in Section 2 Vote Denial Claims, 17 *N.Y.U. J. Legis. & Pub. Pol'y* 675, 700 (2014). *See also* Christopher S. Elmendorf, *Making Sense of Section 2: Of Biased Votes, Unconstitutional Elections and Common Law Statutes*, 160 U. Penn. L. Rev. 377, 417, 424-27 (2012) (arguing that the Senate Factors may establish a "significant likelihood" of improper race-based decisionmaking); Luke P. McLoughlin, *Section 2 of the Voting Rights Act and City of Boerne: The Continuity, Proximity, and Trajectory of Vote-Dilution Standards*, 31 Vt. L. Rev. 39, 76 (2006) (arguing that "intent remains an aspect of Section 2" liability).

[36] *See* U.S. Department of Justice, *Voting Section Litigation, available at* https://www.justice.gov/crt/voting-section-litigation.

cases have produced favorable outcomes[37] for our clients, a success rate of 83.3%.[38] The following table summarizes the ACLU's Section 2 litigation since Shelby County:

ACLU Section 2 Cases Litigated to Judgment/Settlement/Resolution since *Shelby County*								
Case Name	**Citation**	**Practice Challenged**	**Date Filed**	**Date Resolved**	**Months**	**Success?**	**Elections Held Before Success**	**Offices Elected Before Success**
Bethea v. Deal	2016 WL 6123241 (S.D. Ga.)	Failure to extend voter registration deadline after hurricane	10/18/2016	10/19/2016	0	N	N/A	N/A
Frank v. Walker	768 F.3d 744 (7th Cir. 2014)	Voter ID	12/13/2011	10/6/2014	34	N[39]	N/A	N/A
Florida Democratic Party v. Scott	2016 WL 6080225 (N.D. Fla.)	Failure to extend voter registration deadline after hurricane	10/10/2016	10/12/2016	0	Y	0	0
Jackson v. Bd. of Trustees of Wolf Point	2014 WL 1791229 (D. Mont.)	City malapportioned districts	8/13/2013	4/14/2014	8	Y	0	0

[37] For purposes of this testimony, I largely borrow Professor Ellen Katz's definition of a "successful" Section 2 case. See Ellen Katz, *Documenting Discrimination in Voting: Judicial Findings Under Section 2 of the Voting Rights Act Since 1982*, 39 U. Mich. J. L. Reform 643, 653-54 n.35 (2006) ("Suits coded as a successful plaintiff outcome include both those lawsuits where a court determined, or the parties stipulated, that Section 2 was violated, and a category of lawsuits where the only published opinion indirectly documented plaintiff success," including decisions where a court "granted a preliminary injunction, considered a remedy or settlement, or decided whether to grant attorneys' fees after a prior unpublished determination of a Section 2 violation."). Professor Katz's study was cited by Congress during the 2006 Voting Rights Act reauthorization and in Justice Ginsberg's dissent in *Shelby County*. See *Shelby County*, 133 S.Ct. at 2642 (Ginsberg, J., dissenting) (citing *To Examine the Impact and Effectiveness of the Voting Rights Act: Hearing before the Subcommittee on the Constitution of the House Committee on the Judiciary*, 109th Cong., 1st Sess., pp. 964–1124 (2005)).

[38] By way of comparison, our recent review of Section 2 cases available on Westlaw that were decided since *Shelby County* indicates an overall success rate of less than 40%.

[39] I include *Frank v. Walker* as an "unsuccessful" Section 2 case, because even though litigation on plaintiffs' as-applied constitutional claims is ongoing, the Seventh Circuit has rejected our Section 2 claims. *See Frank v. Walker*, 768 F.3d 744 (7th Cir. 2014).

LULAC v. Cox	No. 2:18-cv-02572 (D. Kan.)	County polling place closure	10/26/2018	1/30/2019	3	Y[40]	1	1
Missouri NAACP v. FFSD	894 F.3d 924 (8th Cir. 2018)	School Board At-Large Elections	10/18/2014	7/3/2018	44	Y	4	9
Montes v. City of Yakima	2015 WL 11120966 (E.D. Wash.)	City At-Large Elections	8/22/2012	6/19/2015	34	Y	1	3
MOVE Texas Civic Fund v. Whitley	No. 5:19-cv-00171-FB (W.D. Tex.)	Statewide voter purge	2/4/2019	4/26/2019	3	Y	0	0
NC NAACP v. McCrory	831 F.3d 204 (4th Cir. 2016)	Voter ID; Early Voting; Same-day registration; Out-of-Precinct Ballots; Pre-Registration	9/30/2013	7/29/2016	34	Y	1	192
Navajo Nation Human Rights Comm'n v. San Juan Cty.	281 F. Supp. 3d 1136 (D. Utah 2017)	All-mail voting system, elimination of polling places	2/26/2016	2/21/2018	24	Y	1	1
OH NAACP v. Husted	2014 WL 10384647 (6th Cir.)	Early Voting	5/1/2014	4/17/2015	12	Y	1	139
Wright v. Sumter Cty.	301 F. Supp. 3d 1297 (M.D. Ga. 2018)	County Redistricting	3/7/2014	3/18/2018	48	Y	3	10

A few points stand out from a review of our recent Section 2 litigation.

First, Section 2 cases take a substantial amount of time to litigate, leaving discriminatory voting practices in place for months or years before they are ultimately blocked or rescinded. The average length of time that the ACLU's Section 2 cases have taken

[40] I include *LULAC v. Cox*—in which the ACLU of Kansas represented plaintiffs challenging the location of Dodge City, Kansas's single polling location outside of the Dodge City limits—as a "successful" case, because the plaintiffs voluntarily dismissed their suit only after the defendants agreed to open additional polling locations, effectively granting the relief sought by the plaintiffs. While not a settlement, the case achieved plaintiffs' desired outcome.

to litigate from filing to resolution is 20.3 months, or more than a year and a half.[41] Even though we sought preliminary relief or otherwise litigated most of our Section 2 cases on expedited schedules, it has often taken years to block discriminatory voting laws through Section 2 litigation.

That may reflect the simple fact that voting rights litigation tends to be quite complex (and expensive). As my predecessor as Director of the ACLU Voting Rights Project, Laughlin McDonald, explained in testimony before the Senate more than a decade ago:

> [Section 2 cases] are among the most difficult cases tried in federal court. According to a study published by the Federal Judicial Center, voting rights cases impose almost four times the judicial workload of the average case. Indeed, voting cases are more work intensive than all but five of the sixty-three types of cases that come before the federal district courts.[42]

Second, because elections take place during the time that Section 2 litigation is pending, government officials are often elected under elections regimes that are later found to be discriminatory—and there is no way to adequately compensate the victims of voting discrimination after-the-fact. In the ten ACLU Section 2 cases that resulted in favorable outcomes for our clients, more than a dozen elections were held between the time of the filing our case and the ultimate resolution of that case. In the interim, more than 350 federal, state, and local government officials were elected under regimes that were later found by a court to be racially discriminatory, or which were later abandoned by the jurisdiction.[43]

Our experience litigating a vote dilution challenge to the at-large method of elections for the Ferguson-Florissant School Board in Missouri is illustrative. The Ferguson-Florissant school

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[41] I note that this number includes two rather unusual Section 2 cases filed in 2016 related to voter registration deadlines affected by Hurricane Matthew, which were completed in a matter of days (*FDP v. Scott* and *Bethea v. Deal*). If those two cases are excluded, the average length of the ACLU's Section 2 cases is 24.4 months—more than 2 years from filing to resolution.

[42] *An Introduction to the Expiring Provisions of the Voting Rights Act and Legal Issues Relating to Reauthorization: Hearing Before the S. Comm. on the Judiciary*, 109th Cong. 141 (2006) (statement of Laughlin McDonald, Director, ACLU Voting Rights Project). This testimony was cited in the D.C. Circuit's ruling in *Shelby County*. *See Shelby County v. Holder*, 679 F.3d 848, 872 (D.C. Cir. 2012), *rev'd on other grounds*, 570 U.S. 529 (2013). *See also Modern Enforcement of the Voting Rights Act: Hearing Before the S. Comm. on the Judiciary*, 109th Cong. 96 (2006) (statement of Rob McDuff, Att'y, Jackson, Mississippi).

[43] The sources for these calculations can be found in a spreadsheet attached as Appendix A. I note that this is a conservative estimate for a number of reasons. In calculating the number of elections held under a discriminatory regime (and the number of offices elected during those elections), we limited our calculation to federal and state elections, and excluded local elections (except where the elections practice challenged was a local elections practice). For example, for a challenge to a statewide law, we included the number of statewide elections that took place under the discriminatory regime, but excluded local elections from our calculation; we also excluded local government officials elected—either in a statewide election or in a local-only election.

district was created pursuant to a 1975 desegregation order.[44] In 2014, the student body of the district was approximately 80% African-American, but African Americans were only a minority of the district's voting-age population. Due to racially polarized voting, as recently as 2014, there was not a single African-American director on the seven-member school board. Our lawsuit was ultimately successful, with the Eighth Circuit affirming in a unanimous opinion that the Board's at-large method of elections violated Section 2 of the Voting Rights Act.[45] But the case took almost four years to litigate—and the 2015, 2016, 2017, and 2018 elections were held while proceedings were ongoing. In that time, nine members of the school board were elected.[46]

The sprawling North Carolina voter suppression law that I described earlier is also illustrative of the limitations of Section 2 litigation. As a reminder, the law cut back or eliminated means of registration and voting that, collectively, around one million North Carolina voters had used in the 2012 presidential election. This case took 34 months to litigate—almost three years—from filing the complaint to a ruling by the U.S. Court of Appeals for the Fourth Circuit. In the interim, the 2014 general election took place, with 192 federal and state officers elected—including 9 statewide offices, 13 congressional seats, and 170 seats for state legislature.[47]

To be clear, almost 200 federal and state officials in North Carolina were elected under a discriminatory regime that the Fourth Circuit found "target[ed] African Americans with almost surgical precision."[48] While the law has since been struck down, there is no way to now compensate the African-American voters of North Carolina—or our democracy itself—for that gross injustice.

We did everything we could to prevent this happening. We initially litigated this very complex matter on an expedited timeline, and sought a preliminary injunction before the 2014 midterms, which the Fourth Circuit granted.[49] Unfortunately, the Supreme Court stayed that ruling,[50] likely due to concerns that the case was decided too close to the election[51]—effectively leaving the discriminatory regime in place for the 2014 election. The Supreme Court subsequently permitted that preliminary ruling to go into effect,[52] and we ultimately prevailed on

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[44] *Missouri NAACP v. FFSD*, 894 F.3d 924, 930 (8th Cir. 2018).

[45] *See id.*

[46] *See* Appendix A.

[47] *See* North Carolina State Board of Elections, 11/04/2014 General Election Results – Statewide, available at https://er.ncsbe.gov/?election_dt=11/04/2014&county_id=0&office=FED&contest=0.

[48] *North Carolina State Conference of NAACP v. McCrory*, 831 F.3d 204, 214 (4th Cir. 2016) ("*NAACP v. McCrory")*.

[49] *League of Women Voters of N.C. v. North Carolina*, 769 F.3d 224 (4th Cir. 2014).

[50] *North Carolina v. League of Women Voters of N.C.*, 135 S.Ct. 6 (Oct. 08, 2014).

[51] Richard L. Hasen, *Reining in the Purcell Principle*, 43 Fla. St. U. L. Rev. 427, 449 (2016).

[52] That is, despite temporarily staying that preliminary ruling, the Supreme Court declined to hear the case on appeal, leaving the preliminary injunction in place for subsequent local elections. *See North Carolina v. League of Women Voters of N. Carolina*, 135 S. Ct. 1735 (2015). This suggests that the Supreme

the final merits of the case.[53] But even though we did everything in our power to prevent this discriminatory law from tainting the 2014 election, we lacked adequate tools to do so.

New congressional action is therefore warranted to enforce the guarantees of the Fourteenth and Fifteenth Amendments because, as our experience in the North Carolina case and others illustrates, existing voting rights protections are inadequate to protect voters from unlawful racial discrimination. The Voting Rights Advancement Act addresses these problems in at least two respects.

First, the VRAA includes a new preclearance provision—with a rolling formula based on recent voting rights violations—that would prevent discriminatory changes to voting laws from taking effect before an election. The VRAA would make states and other jurisdictions eligible for preclearance coverage based on recent voting rights violations, with coverage generally triggered by 15 violations in the state (or ten violations in the state if at least one was committed by the state itself) over the most recent 25 calendar years.[54] The VRAA's preclearance provisions would therefore apply equally to every state, assessing them on an individualized basis, and subjecting states to preclearance based only on recent evidence of voting discrimination. If, in 2013, North Carolina had been subject to preclearance, it is unlikely that it would have been able to pass the sweeping voter suppression bill that I discussed above, given the significant burdens disproportionately imposed on African-American voters by the law.

Second, the VRAA clarifies the standard for obtaining and sustaining a preliminary injunction in Section 2 litigation—thus facilitating the ability of plaintiffs to block discriminatory voting laws *before* they can taint an election. First, Section 7(b)(2) of the VRAA clarifies that plaintiffs may obtain preliminary relief based on a simple showing of (1) a "serious question" that the challenged practice violates the VRA or the Constitution; and (2) that the "balance" of hardships falls in favor of the plaintiffs.[55] Second, Section 7(c) of the VRAA provides that, on appeal, a jurisdiction's inability to enforce its voting laws will not, "standing alone," constitute irreparable harm that would tilt decisively in favor of a stay of preliminary relief. Had this provision been in place in 2014, the preliminary injunction that we won in North Carolina may have remained in effect for the 2014 midterm, thus blocking North Carolina's discriminatory law during the that election.

Court's stay of the preliminary injunction was issued due primarily to the proximity of the Fourth Circuit's ruling to the 2014 general election. *See* Hasen, *Reining in the Purcell Principle*, *supra* note 52.

[53] When the law was struck down after final judgment before the 2016 presidential election, *see NAACP v. McCrory*, 769 F.3d 224), the Supreme Court declined to hear an appeal of that decision as well. *See North Carolina v. N.C. State Conference of NAACP*, 137 S. Ct. 1399 (2017).

[54] *See* VRAA, Section 3(b).

[55] This standard largely mirrors how the Second Circuit has articulated the preliminary injunction standard in all cases. *See, e.g.*, *Citigroup Global Mkts., Inc. v. VCG Special Opportunities Master Fund Ltd.*, 598 F.3d 30, 35 (2d Cir. 2010) (noting that a preliminary injunction is appropriate where there are "sufficiently serious questions going to the merits to make them a fair ground for litigation and a balance of hardships tipping decidedly toward the party requesting the preliminary relief.)".

All of this underscores what makes the right to vote different from other civil rights. In theory, victims of discrimination in other areas—such as employment or housing—can be compensated after the fact with money damages, and thereby made fully whole. But the right to vote is different. Once an election has occurred under a discriminatory regime, that election cannot be re-run. Government officials are elected, the benefits of incumbency vest, and there is no way to undo the discrimination that has occurred. Perhaps more so than in any other area, discrimination in voting must be prevented *before* it occurs. And our experience illustrates that stronger statutory protections are necessary for that prophylactic purpose.

B. Section 2 Litigation Generally Since *Shelby County*

Since *Shelby County*, federal courts have issued decisions in dozens of Section 2 cases beyond the ACLU's litigation docket. Because, as I noted above, successful Section 2 litigation is in some sense probative of unconstitutional racial discrimination in voting, the relative prevalence of such successful litigation provides some useful information as to conditions with respect to ongoing racial discrimination in voting at different levels of government, and in different states.

Our review of recent successful Section 2 litigation reveals two basic points: (1) much voting discrimination occurs at the local level, where changes to voting laws are more difficult to monitor (at least as compared to the state level), highlighting the need for more effective transparency and notice requirements; and (2) voting discrimination remains concentrated in certain states, justifying particularly strong protections in those states.

Since *Shelby County* was decided, there have been a total of 75 Section 2 cases that have been reported on Westlaw[56] in which courts have rendered a determination on liability—preliminary or otherwise—or in which the parties have settled. A list of these cases is attached as Appendix B.

Of these 75 Section 2 cases available on Westlaw, the plaintiffs have been successful in 26 cases, which are listed below:

[56] I note that while we have attempted to be systematic in this research, we do not purport to present a complete picture of all Section 2 litigation. Because this analysis is limited only to cases reported on Westlaw, it is inevitably under-inclusive in some respects. It does not, for example, include all of the ACLU cases discussed in the previous section—some of which have not been reported on Westlaw.

Successful Section 2 Cases Decided Since *Shelby County* That Are Reported on Westlaw							
	Case Name	**Citation**	**State**	**Frmrly Cvrd?**	**Year**	**Dilution / Denial**	**Defendant**
1	Allen v. City of Evergreen	2014 WL 12607819	AL	Y	2014	Dilution	City
2	Luna v. County of Kern	291 F.Supp.3d 1088	CA	N	2018	Dilution	County
3	Florida Democratic Party v. Scott	2016 WL 6080225	FL	N	2016	Denial	State
4	Ga. NAACP v. Fayette County	118 F.Supp.3d 1338	GA	Y	2015	Dilution	County
5	Wright v. Sumter Cty. Bd. of Elections & Registration	301 F.Supp.3d 1297	GA	Y	2018	Dilution	County
6	Davis v. Guam	932 F.3d 822	Guam	N	2019	Denial	Territory
7	Terrebone Parish NAACP v. Jindal	2017 WL 3574878	LA	Y	2017	Dilution	Parish
8	MI APRI v. Johnson	2019 WL 2314861	MI	Y	2016	Denial	State
9	United States v. City of Eastpointe	2019 WL 1379974	MI	N	2019	Dilution	City
10	Missouri NAACP v. FFSD	894 F.3d 924	MO	N	2018	Dilution	County
11	Jackson v. Bd. of Trustees of Wolf Point, Mont., Sch. Dist. No. 45-45A	2014 WL 1794551	MT	N	2014	Dilution	City
12	NC NAACP v. McCrory	831 F.3d 204	NC	Y	2016	Denial	State
13	Sanchez v. Cegavske	214 F.Supp.3d 961	NE	N	2016	Denial	State
14	Favors v. Cuomo	39 F.Supp.3d 276	NY	Y	2014	Dilution	State
15	Molina v. County of Orange	2013 WL 3009716	NY	N	2013	Dilution	County
16	Pope v. County of Albany	94 F.Supp.3d 302	NY	N	2015	Dilution	County
17	OH NAACP v. Husted	2014 WL 10384647	OH	N	2014	Denial	State
18	Bear v. County of Jackson	2017 WL 52575	SD	N	2017	Denial	County

19	Benavidez v. Irving Indep. Sch. Dist.	2014 WL 4055366	TX	Y	2014	Dilution	School Board
20	Harding v. County of Dallas	2018 WL 1157166	TX	Y	2018	Dilution	County
21	Patino v. City of Pasadena	230 F.Supp.3d 667	TX	Y	2017	Dilution	County
22	Veasey v. Abbott	830 F.3d 216	TX	Y	2016	Denial	State
23	Navajo Nation Human Rights Comm'n v. San Juan Cty.	281 F. Supp. 3d 1136	UT	N	2017	Denial	County
24	Navajo Nation v. San Juan County	266 F.Supp.3d 1341	UT	N	2017	Dilution	County
25	Montes v. City of Yakima	2015 WL 11120966	WA	N	2015	Dilution	City
26	OWI v. Thomsen	198 F.Supp.3d 896	WI	N	2016	Denial	State

I note that the ACLU and/or its affiliates were counsel in 8 of these 26 successful Section 2 cases;[57] by way of comparison, the Department of Justice was counsel in only 3.[58] And again, the current Administration has not filed a single Section 2 case.

Before discussing any observations that can be drawn from this table, I note a few caveats. First, any observations drawn from this table can only be preliminary in nature, as litigation remains ongoing in some of these cases—for example, on appeal.[59] Second, I note that

[57] *See Florida Democratic Party v. Scott*, 2016 WL 6080225 (N.D. Fla. Oct. 12, 2016); *Jackson v. Wolf Point*, 2014 WL 1794551 (D. Montana April 24, 2014) (settled); *Missouri NAACP v. FFSD*, 894 F.3d 924 (8th Cir. 2018); *Montes v. City of Yakima*, 2015 WL 11120966 (E.D. Wash. June 19, 2015); *Navajo Nation Human Rights Comm'n v. San Juan Cty.*, 281 F. Supp. 3d 1136 (D. Utah 2016); *NC NAACP v. McCrory*, 831 F.3d 204 (4th Cir. 2016); *Ohio NAACP v. Husted*, 768 F.3d 524 (2016) (vacated as moot, but ultimately settled); *Wright v. Sumter Cty. Bd. of Elections & Registration*, 301 F.Supp.3d 1297 (M.D. Ga. 2018).

[58] *See NC NAACP v. McCrory*, 831 F.3d 204 (4th Cir. 2016); *United States v. City of Eastpointe*, 2019 WL 1379974 (E.D. Mich. March 27, 2019) (subsequently settled); *Veasey v. Abbott*, 830 F.3d 216 (5th Cir. 2016) (en banc).

[59] Several of these cases are on appeal or have only been litigated at the preliminary injunction stage, and their status as "successful" or "unsuccessful" Section 2 cases may change in later proceedings. For example, I count as "successful" cases those in which a preliminary injunction has been granted for plaintiffs, but where a final decision (which could go either way) has not yet been rendered; others are cases in which a final judgment has been rendered by the district court, but in which appeals are pending. The list will therefore ultimately be over-inclusive in some respects, as it is possible that plaintiffs not prevail in some of these cases at final judgment or on appeal. By the same token, however, the list will also likely be underinclusive in some respects, as is does not include cases where plaintiffs have been unsuccessful in seeking preliminary injunctions or on final judgments from the trial court, but may yet

focusing exclusively on Section 2 litigation understates the amount of racial discrimination in voting we face today, because it omits racially discriminatory voting rights violations that were successfully challenged under different legal theories aside from Section 2. Many of these cases occurred in jurisdictions that were previously subject to preclearance, including:

- **racial gerrymandering** in violation of the Equal Protection Clause of the Fourteenth Amendment, in **Alabama**,[60] **North Carolina**,[61] **Texas**,[62] and **Virginia**[63];

- interference with the guarantee of **language assistance under Section 203** of the Voting Rights Act in **Texas**;[64] and

- a **voter purge program** in **Florida**, under which 82% of voters purged were non-white and 60% were Hispanic,[65] and which the Eleventh Circuit found violated the National Voter Registration Act.[66]

With these caveats in mind, looking exclusively at Section 2 litigation, we can see two patterns.

First, **most recent successful Section 2 litigation (17 out of 26 cases) has occurred not at the state level, but at the local level, where discriminatory changes to voting laws and practices are often harder to detect.** This underscores the importance of the notice and transparency requirements under Section 4 of the VRAA. While state-level changes to voting laws are often covered in the media, local-level changes to voting laws are much more difficult to monitor. The VRAA's notice requirements are therefore critical to facilitate community awareness of changes to voting laws before they are implemented. For us, half the battle is simply learning about new voting changes. This is particularly true at the local level, where there

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succeed on appeal. This list also does not include ongoing Section 2 cases in which the only decision rendered thus far is a denial of a defendant's motion to dismiss, motion for summary judgment, or motion for a stay—and where no preliminary or final determination has been rendered on the merits of the plaintiffs' claims.

[60] *Alabama Legislative Black Caucus v. Alabama*, 231 F.Supp.3d 1026 (M.D. Ala. 2017). Although the plaintiffs in this case brought Section 2 claims, they obtained a favorable ruling only on racial gerrymandering claims; I therefore do not include this case as a successful Section 2 claim.

[61] *Cooper v. Harris*, 137 S. Ct. 1455 (2017).

[62] *Abbott v. Perez*, 138 S.Ct. 2305 (2018). I do not include this case as a successful Section 2 case for the same reason that I exclude the Alabama racial gerrymandering case.

[63] *Bethune-Hill v. Va. State Bd. of Elections*, 137 S. Ct. 788 (2017).

[64] *See OCA-Greater Houston v. Texas*, 867 F.3d 604 (5th Cir. 2017).

[65] *See* Jeff Burlew, *Florida's latest voter purge bid draws criticism*, USA Today, Jan. 14, 2014, https://www.usatoday.com/story/news/nation/2014/01/14/florida-purge-voter-rolls/4470685/.

[66] *Arcia v. Florida Secretary of State*, 772 F.3d 1335 (11th Cir. 2014).

are often fewer resources available to assist community members dealing with a change to voting laws which they may not know how to analyze or respond to.

Second, while the Supreme Court has not required that preclearance determinations be made with perfect precision,[67] **the relative prevalence of successful Section 2 litigation provides a basis for congressional action that would subject certain states to stronger voting rights protections.** Since *Shelby County*, more than one-half of the successful Section 2 cases (14 of 26 cases) have occurred in a handful of states that were formerly-covered by Section 5 (in whole or in part): Alabama, California, Florida, Georgia, Louisiana, North Carolina, New York, and Texas. The prevalence of recent successful Section 2 litigation in certain states suggests that subjecting some but not all states to preclearance coverage may be warranted.

Conclusion

Voting discrimination remains a stubborn problem in 2019. Strong congressional action is justified to fulfill the promise of the Reconstruction Amendments: that all Americans should be free to participate in our democracy on equal terms, free from racial discrimination.

I thank you again for the opportunity to testify before you, and look forward to answering any questions that you have.

[67] *See South Carolina v. Katzenbach*, 383 U.S. 301, 329-30 (1966) (upholding original preclearance coverage provision, which applied to states like "Alabama, Louisiana, and Mississippi—in which federal courts have repeatedly found substantial voting discrimination," and other states, like "Georgia and South Carolina—plus large portions of a third State—North Carolina—for which there was more fragmentary evidence of recent voting discrimination").

Appendix A

Case Name	Elections Conducted during Litigation	Elected Offices up for Election during Litigation	Authority	URL
LULAC v. Cox	2018 General Election	**1 Township Clerk**	Ford County Elections Results	http://www.fordcounty.net/DocumentCenter/View/15080/Official-General-Election-results-for-11-6-2018
Missouri NAACP v. FFSD	2015 Municipal General (04/07/2015)	**2 Seats**	St. Louis County Elections Results	https://stlouisco.com/YourGovernment/Elections/ElectionResultsHistory#47005572-2015
	2016 Municipal General (04/05/2016)	**2 Seats**	St. Louis County Elections Results	https://stlouisco.com/Portals/8/docs/document%20library/elections/eresults/el160405/el45.htm
	2017 Municipal General (04/04/2017)	**3 Seats**	St. Louis County Elections Results	https://stlouisco.com/Portals/8/docs/document%20library/elections/eresults/el170404/el45.htm
	2018 Municipal General (04/03/2018)	**2 Seats**	St. Louis County Elections Results	https://stlouisco.com/Portals/8/docs/document%20library/elections/eresults/el180403/1802Certs/EL45.HTM
Montes v. City of Yakima	2013 General Election	**3 At-Large Positions**	Yakima County Election Results	https://www.yakimacounty.us/ArchiveCenter/ViewFile/Item/214
NC NAACP v. McCrory	2014 General Election	**9 Statewide Elections** (US Senator; Supreme Court Chief Justice (Parker); Supreme Court Associate Justice (Martin); Supreme Court Associate Justice (Hudson); Supreme Court Associate Justice (Beasley); Court of Appeals Judge (Martin); Court of Appeals Judge (Hunter); Court of Appeals Judge (Stroud); Court of Appeals Judge (Davis) **+ 13 Congressional Seats + 170 State Legislative Seats** (50 NC Senate Seats + 120 NC House Seats)	North Carolina State Board of Elections	https://er.ncsbe.gov/?election_dt=11/04/2014&county_id=0&office=FED&contest=0; https://er.ncsbe.gov/?election_dt=11/04/2014&county_id=0&office=COS&contest=0; https://er.ncsbe.gov/?election_dt=11/04/2014&county_id=0&office=JUD&contest=0
Navajo Nation Human Rights Comm'n v. San Juan Cty.	2016 General Election	**1 Commissioner Seat**	San Juan County	https://sanjuancounty.org/sjc-content/documents/2016%20general%20election%20results.pdf
OH NAACP v. Husted	2014 General Election	**7 Statewide Elections** (Governor, Attorney General, Auditor of State, Secretary of State; Treasurer of State; OH Supreme Court Seat 1; OH Supreme Court Seat 2) **+ 16 Congressional Seats + 116 State Legislative Seats** (17 OH Senate Seats + 99 OH House Seats)	Ohio Secretary of State	https://www.sos.state.oh.us/elections/election-results-and-data/2014-elections-results/#gref
Wright v. Sumter Cty. Bd. of Elections & Registration	2014 Board Election (05/20/2014)	**7 Board of Education Seats**	Georgia Secretary of State	http://results.enr.clarityelections.com/GA/Sumter/51475/130800/en/summary.html
	2016 Board Election (05/24/2016)	**3 Board of Education Seats**	Georgia Secretary of State	http://results.enr.clarityelections.com/GA/Sumter/60171/170542/en/summary.html

Appendix B - Section 2 Cases Decided Since *Shelby County* That Are Available on Westlaw

	Case Name	Citation	State	Frmrly Cvrd?	Year	Dilution/Denial?	Defendant	Success?
1	ADC v. Strange	838 F.3d 1057	AL	Y	2016	Denial	State	N
2	AL Leg Black Caucus v. Alabama	231 F.Supp.3d 1026	AL	Y	2017	Dilution	State	N
3	Allen v. City of Evergreen	2014 WL 12607819	AL	Y	2014	Dilution	City	Y
4	Barber v. Bice	44 F.Supp.3d 1182	AL	Y	2014	N/A	State	N
5	Ford v. Strange	580 Fed.Appx. 701	AL	Y	2014	N/A	State	N
6	Lewis v. Governor of Alabama	896 F.3d 1282	AL	Y	2018	Dilution	State	N
7	Harris v. City of Texarkana	2015 WL 128576	AR	N	2015	Dilution	City	N
8	AZ Secretary of State v. Feldman	137 S.Ct. 446	AZ	Y	2016	Denial	State	N
9	Jennerjahn v. City of Los Angeles	2016 WL 1327555	CA	N	2016	N/A	City	N
10	Vang v. Lopey	2017 WL 132056	CA	N	2017	N/A	County	N
11	Rios-Andino v. Orange County	51 F.Supp.3d 1215	FL	N	2014	Dilution	County	N
12	Bethea v. Deal	2016 WL 6123241	GA	Y	2016	Denial	State	N
13	Ga. NAACP v. Fayette County	118 F.Supp.3d 1338	GA	Y	2015	Dilution	County	Y
14	Ga. NAACP v. Georgia	269 F.Supp.3d 1266	GA	Y	2017	Dilution	State	N
15	Davis v. Guam	932 F.3d 822	Guam	N	2017	Denial	Territory	Y
16	Akina v. Hawaii	835 F.3d 1003	HI	N	2016	Denial	State	N
17	Gonzales v. Madigan	2017 WL 3978703	IL	N	2017	Dilution		N
18	Kowalski v. Cook County Officers Elec. Bd.	2016 WL 4765711	IL	N	2016	N/A	County	N
19	Quinn v. Bd. of Ed.of the City of Chicago	887 F.3d 322	IL	N	2018	Dilution	City	N
20	Hall v. Louisiana	884 F.3d 546	LA	Y	2018	Dilution	Parish	N
21	Terrebone Parish NAACP v. Jindal	2017 WL 3574878	LA	Y	2017	Dilution	Parish	Y
22	York v. City of Gabriel	89 F.Supp.3d 843	LA	Y	2015	Dilution	City	N
23	Chong Su Yi v. DNC	666 Fed.Appx. 279	MD	N	2016	Denial	Party	N
24	VOIE v. Baltimore City Elections Bd.	214 F.Supp.3d 448	MD	N	2016	Denial	City	N
25	Davis v. Detroit Public Sch. Comm. Dist.	899 F.3d 437	MI	N	2018	Dilution		N
26	MI APRI v. Johnson	2019 WL 2314861	MI	Y	2016	Denial	State	Y

Appendix B - Section 2 Cases Decided Since *Shelby County* That Are Available on Westlaw

	Case Name	Citation	State	Frmrly Cvrd?	Year	Dilution/Denial?	Defendant	Success?
27	Philips v. Snyder	836 F.3d 707	MI	Y	2016	Dilution	State	N
28	Berry v. Kander	191 F.Supp.3d 982	MO	N	2016	Dilution	State	N
29	Missouri NAACP v. FFSD	894 F.3d 924	MO	N	2018	Dilution	County	Y
30	Fairley v. Hattiesburg	662 Fed.Appx. 291	MS	Y	2016	Dilution	City	N
31	Thompson v. Attorney General of MS	2015 WL 12916336	MS	Y	2015	N/A	State	N
32	West v. Natchez	2016 WL 1178771	MS	Y	2016	Dilution	City	N
33	Jackson v. Bd. of Trustees of Wolf Point, Mont., Sch. Dist. No. 45-45A	2014 WL 1794551	MT	N	2014	Dilution	City	Y
34	NC NAACP v. McCrory	831 F.3d 204	NC	Y	2016	Denial	State	Y
35	Walker v. Hoke County	694 Fed.Appx. 143	NC	Y	2017	Dilution	County	N
36	Brakebill v. Jaeger	932 F.3d 671	ND	N	2016	Denial	State	N
37	Sanchez v. Cegavske	214 F.Supp.3d 961	NE	N	2016	Denial	State	Y
38	Baca v. Berry	806 F.3d 1262	NM	N	2015	Dilution	City	N
39	Favors v. Cuomo	39 F.Supp.3d 276	NY	Y	2014	Dilution	State	Y
40	Molina v. County of Orange	2013 WL 3009716	NY	N	2013	Dilution	County	Y
41	Pope v. County of Albany	94 F.Supp.3d 302	NY	N	2015	Dilution	County	Y
42	Fair Elections Ohio v. Husted	770 F.3d 456	OH	N	2014	Denial	State	N
43	NEOCH v. Husted	837 F.3d 612	OH	N	2016	Denial	State	N
44	OH Democratic Party v. Husted	834 F.3d 620	OH	N	2016	Denial	State	N
45	OH Democratic Party v. OH Republican Party	2016 WL 10570271	OH	N	2016	Denial	Party	N
46	OH NAACP v. Husted	2014 WL 10384647	OH	N	2014	Denial	State	Y
47	Bear v. County of Jackson	2017 WL 52575	SD	N	2017	Denial	County	Y
48	Clayton v. Forrester	2014 WL 2964969	TN	N	2014	Dilution		N
49	Tigrett v. Cooper	595 Fed.Appx. 554	TN	N	2014	Dilution	State	N
50	Benavidez v. Irving Indep. Sch. Dist.	2014 WL 4055366	TX	Y	2014	Dilution	School Board	Y

Appendix B - Section 2 Cases Decided Since *Shelby County* That Are Available on Westlaw

	Case Name	Citation	State	Frmrly Cvrd?	Year	Dilution/Denial?	Defendant	Success?
51	Cisneros v. Pasadena Indep. Sch. Dist.	2014 WL 1668500	TX	Y	2014	Dilution	School Board	N
52	Gonzalez v. Harris County	601 Fed.Appx. 255	TX	Y	2015	Dilution	County	N
53	Patino v. City of Pasadena	230 F.Supp.3d 667	TX	Y	2017	Dilution	County	Y
54	Abbott v. Perez	138 S.Ct. 2305	TX	Y	2018	Dilution	State	N
55	Petteway v. Henry	738 F.3d 132	TX	Y	2013	Dilution	County	N
56	Veasey v. Abbott	830 F.3d 216	TX	Y	2016	Denial	State	Y
57	Krieger v. Virginia	599 Fed.Appx. 112	VA	Y	2015	Denial	State	N
58	Lee v. VA Bd. of Elections	843 F.3d 592	VA	Y	2016	Denial	State	N
59	Parson v. Alcorn	157 F.Supp.3d 479	VA	Y	2016	Denial	State	N
60	Perry-Bey v. Holder	2015 WL 11120509	VA	Y	2015	Denial	State	N
61	Schwiekert v. Herring	2016 WL 7046845	VA	Y	2016	N/A	State	N
62	Montes v. City of Yakima	2015 WL 11120966	WA	N	2015	Dilution	City	Y
63	Frank v. Walker	768 F.3d 744	WI	N	2014	Denial	State	N
64	OWI v. Thomsen	198 F.Supp.3d 896	WI	N	2016	Denial	State	Y
65	Luna v. County of Kern	291 F.Supp.3d 1088	CA	N	2018	Dilution	County	Y
66	Lopez v. Abbott	339 F.Supp.3d 589	TX	Y	2018	Dilution	State	N
67	Wright v. Sumter Cty. Bd. of Elections & Registration	301 F.Supp.3d 1297	GA	Y	2018	Dilution	County	Y
68	Greater Birmingham Ministries v. Merrill	284 F.Supp.3d 1253	AL	Y	2018	Dilution	State	N
69	Harding v. County of Dallas	2018 WL 1157166	TX	Y	2018	Dilution	County	Y
70	Frank v. Walker	768 F.3d 744	WI	N	2014	Denial	State	N
71	Florida Democratic Party v. Scott	215 F.Supp.3d 1250	FL	N	2016	Denial	State	Y
72	Bethea v. Deal	2016 WL 6123241	GA	Y	2016	Denial	State	N
73	Navajo Nation v. San Juan County	266 F.Supp.3d 1341	UT	N	2017	Dilution	County	Y

Appendix B - Section 2 Cases Decided Since *Shelby County* That Are Available on Westlaw

	Case Name	Citation	State	Frmrly Cvrd?	Year	Dilution/Denial?	Defendant	Success?
74	Navajo Nation Human Rights Comm'n v. San Juan Cty.	281 F. Supp. 3d 1136	UT	N	2017	Denial	County	Y
75	United States v. City of Eastpointe	2019 WL 1379974	MI	N	2019	Dilution	City	Y