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Mr. Arturo Vargas

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Written Testimony

Of

Arturo Vargas, Chief Executive Officer
National Association of Latino Elected and Appointed
Officials (NALEO) Educational Fund

Before the U.S. House of Representatives
Committee on the Judiciary

Legislative Proposals to Strengthen the Voting Rights Act

Washington, DC
October 17, 2019

Chair Nadler, Ranking Member Collins, and Members of the Judiciary Committee: thank you for the opportunity to present testimony to you today regarding the need to strengthen the Voting Rights Act to ensure that it protects emerging communities of Latino voters who face discriminatory barriers to the ballot.

I am Arturo Vargas, Chief Executive Officer of NALEO Educational Fund, the leading non-profit, non-partisan organization that facilitates full Latino participation in the American political process, from citizenship to public service. Our constituency encompasses the more than 6,700 Latino elected and appointed officials nationwide, and includes Republicans, Democrats, and Independents.

For several decades, NALEO Educational Fund has been at the forefront of efforts to advance policies that protect Latino voting rights, and ensure that Latinos are fully engaged as voters and enjoy fair opportunities to choose their elected leaders. We have advocated passage of state and federal voting rights legislation including the reauthorization of key provisions of the Voting Rights Act of 1965 (VRA). We have also provided direct assistance to voters encountering barriers to casting ballots through our year-round, bilingual hotline, 888-VE-Y-VOTA, and through nationwide dissemination of bilingual voting rights public service announcements, palm cards, and other materials. In 2018 alone, the 888-VE-Y-VOTA hotline received over 9,100 voting calls.

On the basis of what we have learned from calls to our hotline and other reports from Latino voters, as well as our partnerships with peer organizations and elected and appointed officials, we have identified, and seek to redress, barriers that continue to impede Latino political participation. We have also observed and documented the success of the VRA in eliminating discriminatory laws and limiting their harmful effects. NALEO Educational Fund is acutely concerned that the Supreme Court's decision in *Shelby County v. Holder*, 570 U.S. 529 (2013), has impeded VRA enforcement, removing the Department of Justice's (DOJ) ability to timely and efficiently halt discriminatory laws and overburdening DOJ and private litigants with the effort and expense of bringing protracted, complicated litigation to remedy each instance of discrimination. We strongly urge Congress to restore the VRA to full strength to ensure that our nation continues to make progress toward full and equal participation in elections by all Americans, regardless of their race, ethnicity, or linguistic ability.

Emerging Latino and Other Minority Communities Are Geographically Dispersed and Poised to Exercise Political Influence

In the 54 years since the VRA entered into force, the growth rates of populations of voters of color have significantly outpaced the rate at which the population of non-Hispanic white voters has grown.¹ As their overall numbers have increased,

¹ E.g., Associated Press, "Census: Every Ethnic, Racial Group Grew, but Whites Slowest" (June 23, 2017), <https://www.nbcnews.com/news/nbcblk/census-every-ethnic-racial-group-grew-whites-slowest-n775591>; Karen R. Humes, Nicholas A. Jones, and Roberto R. Ramirez, Census Bureau, *Overview of Race and Hispanic Origin: 2010*, Doc. C2010BR-02 (March 2011), <https://www.census.gov/prod/cen2010/briefs/c2010br-02.pdf>

historically underrepresented voters have become more numerous and visible in new and different states and cities than was previously the case. For example, it has long been the case that Asian American voters were concentrated in jurisdictions in the western United States including Hawaii and California, but between 2000 and 2010, Georgia and North Carolina were two of the three states with the fastest-growing Asian American populations in the United States, and today, almost one in four Asian Americans lives in the South.² Georgia has also seen its Latino population more than double during this period.³ Between 2007 and 2014, five of the ten U.S. counties whose Latino populations grew most rapidly were in North or South Dakota⁴, two states whose overall Latino populations still account for less than ten percent of their residents, and are dwarfed by Latino communities in states like New Mexico, Texas, and California.

Latino voters and candidates are an increasingly visible presence in elections and elected office everywhere in the United States. Puerto Rican migration from the island to the mainland in the aftermath of Hurricane Maria is one of the most recent contributors to this trend: indicators including cell phone geolocation data and records of Facebook users' locations show concentrations of Puerto Rican residents settling both in longstanding population centers in central and south Florida and the New York City region, as well as in states and metropolitan areas like Atlanta, Georgia; southeastern Pennsylvania; northern Ohio; and along parts of New York's northern border with Canada.⁵

Elsewhere around the country, Latino families have moved in search of work opportunities and to join expanding communities of people with similarly diverse national origins, as evidenced by the growing reach of coverage under Section 203 of the VRA. Between 2011 and 2016, the number of counties and cities required to provide voting materials and assistance in multiple languages increased by 15, and

² E.g., Asian Americans Advancing Justice, *A Community of Contrasts: Asian Americans, Native Hawaiians and Pacific Islanders in the South* (2014), https://www.advancingjustice-aajc.org/sites/default/files/2016-09/2014_Community%20of%20Contrasts.pdf; Terry Ao Minnis, "Asian Americans Advancing Justice - AAJC, Section 5 of the Voting Rights Act and Asian American Voters" (June 20, 2016), <https://www.advancingjustice-aajc.org/sites/default/files/2016-09/Section%205%20of%20the%20VRA%20and%20Asian%20Americans.pdf>; Gutavo Lopez, Neil G. Ruiz, and Eileen Patten, Pew Research Center, "Key facts about Asian Americans, a diverse and growing population" (September 8, 2017), <https://www.pewresearch.org/fact-tank/2017/09/08/key-facts-about-asian-americans/>

³ Antonio Flores, Pew Research Center, "How the U.S. Hispanic population is changing" (September 18, 2017), <https://www.pewresearch.org/fact-tank/2017/09/18/how-the-u-s-hispanic-population-is-changing/>

⁴ Renee Stepler and Mark Hugo Lopez, Pew Research Center, "Fast-growing and slow-growing Hispanic counties" (September 8, 2016), <https://www.pewresearch.org/hispanic/2016/09/08/2-fast-growing-and-slow-growing-hispanic-counties/> [Hereinafter "Fast-growing Hispanic counties"]

⁵ Center for Puerto Rican Studies, Hunter College, CUNY, *Puerto Rico One Year After Hurricane Maria* 17, 20-22 (October 2018), https://centropr.hunter.cuny.edu/sites/default/files/data_briefs/Hurricane_maria_1YR.pdf; Sujata Gupta, "Facebook data show how many people left Puerto Rico after Hurricane Maria," SCIENCE NEWS (May 3, 2019), <https://www.sciencenews.org/article/facebook-data-show-how-many-people-left-puerto-rico-after-hurricane-maria>

Spanish-language coverage extended to four new states: Idaho, Oklahoma, Iowa, and Georgia.⁶

When NALEO Educational Fund compiled statistics about Latino elected officials in 1996, we counted Latinos in office in 33 of the 50 states, and in the District of Columbia. By 2016, the map had expanded significantly for Latino elected leaders to more than 40 of the states; by then, Latino officials had made advances by winning elections in locations like West Virginia; urban northern Virginia; rural corners of Midwestern states such as Oklahoma and Iowa; and in western frontier towns including Wilder, Idaho and Casper, Wyoming.

Policymakers Have Frequently Responded to Underrepresented Voters' Exercise of Political Influence by Restricting Voting and Manipulating Election Outcomes

There are strong indications that this rapid, visible growth of Latino communities and other newly emerging racial or ethnic populations has fostered the perception that communities of color may pose a threat to existing political power structures. A pattern of manipulation of election laws in response to minorities' potential political influence stretches back to the founding of our democracy. From America's inception, lawmakers denied enslaved African Americans the right to vote, and free African Americans were either formally excluded or barred in practice from voting by property ownership requirements and other stringent voter qualifications. Although the growth of America's abolitionist movement, the Union's victory in the Civil War, and Reconstruction in the South eliminated many voting impediments, concerns about the political power of the African American vote dominated America's political discourse, and inspired backlash in the form of "black codes" and organized efforts to incarcerate, intimidate, and prevent African Americans from voting. The collapse of Reconstruction in 1877 further normalized these voter suppression tactics, and they became the ideological foundation of Jim Crow:

"Even before Reconstruction came to a quasi-formal end in 1877, black voting rights were under attack. Elections were hotly contested, and white Southerners ... engaged in both legal and extralegal efforts to limit the political influence of freedmen. In the early 1870s, both in the South and in the border states, districts were gerrymandered (i.e., reshaped for partisan reasons), precincts reorganized, and polling places closed to hinder black political participation."⁷

Immigrant communities have frequently attracted similar hostility when they grew large enough to potentially exercise political influence. In the late nineteenth century, a strong sentiment against universal suffrage began to increase as "opponents of universal suffrage consistently couched their opinions in language redolent with class, ethnic, and racial hostility."⁸ Public antipathy extended to people

⁶ Asian Americans Advancing Justice-AAJC, NALEO Educational Fund, and Native American Rights Fund, *Voting Rights Act Coverage Update 1-2* (December 2016), <https://advancingjustice-aajc.org/sites/default/files/2016-12/Section%20203%20Coverage%20Update.pdf>

⁷ Alexander Keyssar, *THE RIGHT TO VOTE: THE CONTESTED HISTORY OF DEMOCRACY IN THE UNITED STATES* 84 (Basic Books: 2009).

⁸ *Id.* at 98.

with disfavored European national origins, such as the Irish, and intensified in the form of anti-immigrant attitudes about Latinos and Asian Americans. For example, “in Texas, Mexican immigrants were described as a ‘political menace,’ as ‘foreigners who claim American citizenship but who are as ignorant of things American as the mule.’”⁹ At the end of the nineteenth century, most Americans supported both excluding people of Chinese origin from voting and from entering the country.¹⁰ Provisions in state constitutions included language like the following, from California: “no native of China shall ever exercise the privileges of an elector in this State.”¹¹ California’s constitution also prohibited from voting any “person who shall not be able to read the Constitution in the English language and write his name,” in response to the perception that foreign-born residents and Mexican Americans were immigrating in waves and forming a potential “ignorant foreign vote”.¹²

Within the past two decades, these same patterns of restrictive lawmaking in response to political presence and mobilization have repeated in many parts of the country. In North Carolina, African American voter turnout surged during the Presidential elections of 2008 and 2012: in 2000 the non-Hispanic white turnout rate was more than ten points higher than the African American participation rate, whereas in 2008, non-Hispanic white and African American voting rates were identical.¹³ Legislators wrote a wide-ranging package of restrictions on voting, famously deemed by a panel of federal judges to have targeted black voters “with almost surgical precision”¹⁴, in the wake of the *Shelby County* decision and with the mobilization of the state’s black voting community fresh in their memory.¹⁵

Latino and Asian American voters have been stereotyped as foreigners¹⁶, regardless of their citizenship status, and throughout the country, where Latino and Asian American communities have grown most dramatically, anti-immigrant measures have followed to mitigate the perceived socio-political threat to historical white majorities.¹⁷

⁹ *Id.* at 99.

¹⁰ *Id.* at 113.

¹¹ *Id.* at 114.

¹² *Id.* at 117.

¹³ Census Bureau, Current Population Survey, Reported Voting and Registration of the Total Voting-Age Population, by Sex, Race, and Hispanic Origin, for States: November 2000 (Table 4a), <https://www.census.gov/data/tables/2000/demo/voting-and-registration/p20-542.html>; Reported Voting and Registration of the Voting-Age Population, by Sex, Race and Hispanic Origin, for States: November 2008 (Table 4b), <https://www.census.gov/data/tables/2008/demo/voting-and-registration/p20-562-rv.html>

¹⁴ *North Carolina State Conference of the NAACP v. McCrory*, 831 F.3d 204, 214 (4th Cir. 2016).

¹⁵ Sarah Childress, “Court: North Carolina Voter ID Law Targeted Black Voters,” FRONTLINE (July 29, 2016), <https://www.pbs.org/wgbh/frontline/article/court-north-carolina-voter-id-law-targeted-black-voters/>

¹⁶ For example, a Latino Decisions poll conducted for the National Hispanic Media Coalition found that non-Hispanic whites overestimated the percentages of U.S. Latinos who are immigrants, and who are undocumented. National Hispanic Media Coalition and Latino Decisions, *The Impact of Media Stereotypes on Opinions and Attitudes Towards Latinos 2* (September 2012), <http://www.nhmc.org/sites/default/files/LD%20NHMC%20Poll%20Results%20Sept.2012.pdf>

¹⁷ Audrey Singer, Jill H. Wilson, and Brooke DeRenzi, Metropolitan Policy Program at Brookings, *Immigrants, Politics, and Local Response in Suburban Washington* (February 2009), https://www.brookings.edu/wp-content/uploads/2016/06/0225_immigration_singer.pdf

For example, Prince William County, Virginia, made headlines when its Board of County Supervisors adopted a resolution in 2007 to ensure local officials' active participation in immigration enforcement activities and to exclude people with immigrant origins from accessing public services and benefits. Lawmakers hoped to discourage at least some immigration generally; then-Board chair Corey Stewart commented, "We are ground zero in this debate on immigration. We've got a responsibility to do it right."¹⁸ At this time, Latino and Asian American populations in the county were increasing rapidly; according to Census data, the County's Latino population grew 229.7 percent and its Asian population 201.9 percent between 2000 and 2012, while the non-Hispanic white population increased by 41.2 percent.¹⁹ These residents were either citizens or potential future voters, and in spite of officials' efforts to make the jurisdiction less welcoming and attractive to families from underrepresented communities, they have already changed the face of politics in Prince William County. In November 2017 the County's voters elected two of the first Latinas ever to serve in the Virginia House of Delegates, Elizabeth Guzman and Hala Ayala.

State and federal officials that represent rapidly growing Latino and Asian American constituencies have advocated similar legislation just as emerging communities in their jurisdictions have gained visibility and political attention. Between the 2000 and 2010 Censuses, Alabama's Latino population increased by more than 144 percent²⁰, and in 2011, the state enacted H.B. 56, considered one of the harshest immigration enforcement laws in the country at the time. The law would have required immigration status checks during property rental and other commercial transactions, involved schools in investigating students and their families, and explicitly created a new barrier to voting by mandating that newly registering voters present documentation of their citizenship. That same year, Alabama also adopted a strict voter identification requirement.

In other states that experienced similar dramatic demographic change, including Georgia and South Carolina, legislative efforts to deny U.S. citizenship to American-born children of undocumented immigrants arose in lockstep with the increasing presence of Latino and Asian American communities²¹: South Carolina's Latino population was the fastest-growing in the nation between 2000 and 2010, while by

¹⁸ Ian Urbina and Maria Newman, "Virginia County Votes to Deny Services to Illegal Immigrants," N.Y. TIMES (October 17, 2007), <https://www.nytimes.com/2007/10/17/us/17prison-cnd.html>

¹⁹ Prince William County, "The Prince William Report: Prince William County Demographic and Economic Newsletter" (January – March 2014), <https://www.pwcgov.org/government/dept/doit/gis/Documents/demographics/Prince%20William%20Report%202014%201st%20Q.pdf>

²⁰ Sharon R. Ennis, Merarys Rios-Vargas, and Nora G. Albert, Census Bureau, *The Hispanic Population: 2010*, Doc. C2010BR-04 (May 2011), <https://www.census.gov/prod/cen2010/briefs/c2010br-04.pdf> [hereinafter "The Hispanic Population"].

²¹ See Shankar Vedantam, "State Lawmakers Taking Aim at Amendment Granting Birthright Citizenship," WASHINGTON POST (Jan. 5, 2011), <http://www.washingtonpost.com/wp-dyn/content/article/2011/01/05/AR2011010503134.html>; *United States v. Wong Kim Ark*, 169 U.S. 649 (1898) (*holding Fourteenth Amendment grants U.S. citizenship to native-born children of alien parents*).

2010, Georgia's Latino population was the tenth-largest in the country.²² Members of Congress from many of these same states have championed federal legislation to enact this restriction; in the 116th Congress, the Birthright Citizenship Act of 2019, H.R. 140, has multiple co-sponsors from the Georgia, North Carolina, Texas, Florida, and South Carolina Congressional delegations.

The VRA Must Reach and Protect Emerging Communities of Underrepresented Voters

From its enactment until the *Shelby County* decision, the VRA protected voters from elections tainted by discriminatory policies by requiring pre-implementation review of election law changes in the jurisdictions with the most entrenched histories of manipulating rules to exclude underrepresented voters. In many places, unfortunately, lawmakers' track records provide an extremely strong indication of the future likelihood of adopting changes that exclude communities historically discriminated against in elections. In other places, however, where demographic changes and extraordinary political mobilization have occurred relatively recently, there may not yet be a documented lengthy history of discriminatory changes, because implementing these practices has not yet become popular or a priority. To complement a preclearance coverage formula that targets those jurisdictions that have proven to routinely engage in voter discrimination over time, a legislative fix to the *Shelby County* decision must include a mechanism that addresses the experience of emerging communities of color that face obstacles to equal electoral participation just as they approach a critical mass.

Our nation's most rapidly growing racial, ethnic, and language minority communities are present today in cities and states in which they did not have a significant presence in the past. If preclearance reaches only places where discrimination has been observed and sanctioned in the past, this invaluable tool will neglect the needs of emerging populations that are only just beginning to experience discrimination inspired by their growing visibility.

To mitigate the insurgent political threat posed by fast-growing or fast-mobilizing minority groups, jurisdictions favor use of certain practices which have proven to be effective for this purpose. Practice-based preclearance narrowly focuses administrative (or judicial) review on these suspect practices that are most likely to be tainted by discriminatory intent or to have discriminatory effects, as demonstrated by broad historical experience, including more than fifty years of history of VRA-based litigation. For example, known discriminatory practices involving methods of election, redistricting, annexations, polling place relocations, and interference with language assistance accounted for less than half of practices for which preclearance was sought between 1990 and 2012, but nearly two-thirds of preclearance denials between 1990 and 2013.

²² Pew Research Center Fact Sheet, "Latinos in the 2010 Elections: Georgia" (October 15, 2010), <https://www.pewresearch.org/hispanic/2010/10/15/latinos-in-the-2010-elections-georgia/>; The Hispanic Population, supra n. 20.

The practice-based preclearance coverage formula would require review (performed by either the DOJ or the federal District Court in Washington, DC) prior to implementation of a designated known practice in a jurisdiction with a racially, ethnically, and/or linguistically diverse population. Practice-based preclearance would only apply to practices designated in advance as likely to be discriminatory in nature.

Diverse jurisdictions covered by the Voting Rights Advancement Act of 2019's practice-based preclearance provisions are states and political subdivisions in which two or more racial, ethnic, or language minority groups each represent 20 percent or more of the voting-age population or in which a single language minority group represents 20 percent or more of the voting-age population on Indian lands located in whole or in part in the political subdivision. These jurisdictions that have achieved visible diversity are the most likely locus of discriminatory election lawmaking; for example, more than 85 percent of all objections to preclearance lodged between 1990 and 2013 found discriminatory intent or effects in a jurisdiction in which practice-based preclearance would apply today.

According to Census Bureau data from the 2013-2017 American Community Survey 5-year estimates, 15 states, the District of Columbia, and 801 counties or county equivalents (making up 25.9% of all counties in the country) currently satisfy this threshold qualification for practice-based coverage. These jurisdictions would not preclear all their voting changes. They would preclear only the practices identified in law as the most frequently and fundamentally discriminatory on the basis of their historical use to silence the political voices of communities of color.²³

Known, Restrictive Voting Practices Discriminatorily Impede Latino Voters in Increasingly Diverse Jurisdictions

The Voting Rights Advancement Act of 2019, H.R. 4, would require preclearance of six kinds of changes most likely to discriminatorily inhibit access to the vote in diverse jurisdictions whose minority populations are attaining visibility and influence. We briefly describe the history and effects of those known practices below.

Methods of Election That Entrench Majority Influence

Lawmakers have a long, established history of manipulating methods of election to dilute the voting power of disfavored minority populations. "Method of election" refers to the system for electing members of a body and may include features affecting the size and composition of the electorate that votes for a given seat, the timing of election for certain seats, and the number or percentage of votes required to win election. By manipulating these features, policymakers can ensure that even where voters of color are able to cast their ballots, the strength of their votes is

²³ For example, five of the six types of laws for which H.R. 4 would require preclearance are known to have played an outsized role in covered jurisdictions' most effective attempts at limiting minority voters' participation during the pre-*Shelby County* era. Proposed annexations, redistricting plans, changes in method of election, polling place consolidations, and language assistance failures accounted for fewer than half of all submissions for preclearance review to the DOJ between 1990 and 2013, but 71 percent of all proposed changes determined to be discriminatory in intent or effects.

diminished. Discriminatory methods of election artificially construct seats, districts, or staggered elections in which white voters are likely to outvote voters of color, in jurisdictions in which voters of color and white voters generally vote for opposing candidates.

Discriminatory Intent and Effect

Jurisdictions have frequently adopted at-large and multi-member districts to dilute minority votes. In an at-large election system, multiple seats on an electoral body are up for election simultaneously, and all of the jurisdiction's voters cast ballots for each of the open seats. In a multi-member election, a jurisdiction is divided into districts, and in each, resident voters all vote for each of multiple seats representing the district. In either system, where communities of color and white majorities consistently support different candidates and vote as racial blocs, white majorities can regularly outvote minorities and sustain political control. This is especially true when at-large elections are coupled with majority vote requirements which seat only candidates who receive at least 50 percent of the vote.

At-large and multi-member elections for local office gained popularity just as the successes of Reconstruction moved white majorities to seek more creative barriers to voters of color. After the Civil War, municipalities in the South began to adopt at-large election systems to ensure that even if and where voters of color overcame hurdles to registering and voting, the effect of their votes could be diminished and limited. One such system, of five city council seats elected at-large, became known as the "Galveston plan" after its adoption in the 1890s in Galveston, Texas, and the subsequent election of an all-white city council to represent a town that was then 22 percent African American.²⁴ Even after the advent of the VRA, at-large elections remained disproportionately popular in jurisdictions whose discriminatory inclinations were well-established. As of 1968, all but six of Texas's 185 home-rule cities elected city councilmembers at-large.²⁵ By the 1976 publication of a study of African American presence in office, 75 percent of southern cities with a population of at least 25,000 were still conducting at-large city council elections, compared to just 47 percent of cities elsewhere around the country.²⁶

The discriminatory history of use of method of election changes is extensive²⁷, and endures into the present. As recently as September 2019, citizens challenged

²⁴ Chandler Davidson and George Korbel, "At-Large Elections and Minority-Group Representation: A Re-Examination of Historical and Contemporary Evidence," 43 *The Journal of Politics* 982, 989-990 (November 1981).

²⁵ Philip W. Barnes, "Alternative Methods of Electing City Council in Texas Home Rule Cities," 16 *Public Affairs Comment* 1 (May 1970).

²⁶ Albert K. Karnig, "Black Representation on City Councils," 12 *Urban Affairs Quarterly* 235 (December 1976).

²⁷ E.g., J. Morgan Kousser, "Protecting the Right to Vote," LOS ANGELES TIMES (September 28, 2012), <https://www.latimes.com/opinion/la-xpm-2012-sep-28-la-oe-kousser-voter-id-20120928-story.html>; cf. Ellen Katz with Margaret Aisenbrey, Anna Baldwin, Emma Cheuse, and Anna Weisbrodt, Voting Rights Initiative of the University of Michigan Law School, *Documenting Discrimination in Voting: Judicial Findings Under Section 2 of the Voting Rights Act Since 1982* (December 2005), https://www.law.berkeley.edu/files/kats_discrimination_in_voting.pdf; Philip P. Frickey, "Majority Rule,

Mississippi's two-tiered system for winning statewide office, which requires candidates to win both the popular vote and a majority of the state's 122 House districts.²⁸ Under this scheme, no African American has held statewide office in Mississippi since Reconstruction.

Discriminatory Method of Election Changes in Action

The mayor and city council of Pasadena, Texas had long advocated, and argued unsuccessfully, to move toward use of an at-large system for electing local officials. However, it was not until the Supreme Court announced its decision in *Shelby County* that Pasadena officials placed a proposal on the November 2013 ballot to eliminate two of the city's eight single-member districts in favor of two at-large seats. Under the pure single-member district scheme, the city's voters - about one-third of whom were Latino - elected two Latino representatives on the city council. The shift to a hybrid system with two at-large seats would indefinitely defer the Latino community's ability to exercise majority power even as its numbers continued to increase relative to those of the town's historical white majority. The timing of this proposal concerned many, because the city's Latino population has been increasing noticeably.²⁹ In spite of significant public concern and opposition, voters adopted the proposal, and plaintiffs challenged it under the VRA.

In a ruling on the merits for plaintiffs, a federal judge ultimately found that the change would have unlawfully diluted the Latino vote, and also was adopted intentionally to accomplish that aim. The decision stated, "The intent was to delay the day when Latinos would make up enough of Pasadena's voters to have an equal opportunity to elect Latino-preferred candidates to a majority of City Council seats. Recent population shifts and growth in Latino citizen voting-age and Spanish-surnamed registered voter population made it clear that this power shift was about to occur."³⁰ Among pertinent facts that surfaced at trial, it emerged that advocates had instructed a vendor developing a targeted mailing list for a mailer urging support for the switch to the at-large plan to "pull out the Hispanic names" from that list. The district court issued a "bail-in" order, requiring Pasadena to preclear future electoral changes.

Before *Shelby County*, this change would have undergone preclearance under Section 5 of the VRA, and would have faced long odds: DOJ frequently denied preclearance for similar conversions from single member districts to at-large seats because they would have had a retrogressive effect on minority voters. Under the

Minority Rights, and the Right to Vote: Reflections upon a Reading of Minority Vote Dilution," 3 Law & Inequality: A Journal of Theory and Practice 209, 228-230 (1985).

²⁸ *McLemore v. Hosemann*, No. 3:19-cv-00383-DPJ-FKB (filed 5/30/19),

<https://www.documentcloud.org/documents/6102478-Mississippi-Elections-Lawsuit.html>

²⁹ Ana Campoy and Nathan Koppel, "Voting Rights Fights Crop Up," WALL STREET JOURNAL (November 1, 2013), <http://online.wsj.com/news/articles/SB10001424052702303843104579169900109920052>;

Editorial, "Plans to Redistrict Pasadena City Council," HOUSTON CHRONICLE (August 15, 2013),

<http://www.chron.com/opinion/editorials/article/Plans-to-redistrict-Pasadena-City-Council-4736602.php>; Press Release, State Senator Sylvia Garcia, "Senator Sylvia R. Garcia Disappointed by Pasadena City Council Approval of a Discriminatory Mid-Decade Redistricting Proposal," (August 21, 2013).

³⁰ *Patino v. Pasadena*, 230 F. Supp.3d 667, 725 (S.D. Tex. 2017).

negative influence of *Shelby County*, this intentionally discriminatory manipulation of elections went into immediate effect. Pasadena only settled the case, dropped its appeal of the district court's findings, and agreed to submit election changes for preclearance until 2023 after costly and protracted private litigation.³¹

The Known Practice of Discriminatory Method of Election Changes

The Voting Rights Advancement Act would require jurisdictions with diverse electorates to obtain preclearance of any proposal to add or replace one or more single-member districts with one or more at-large or multi-member seats on a governing body. The law would focus scrutiny on changes to methods of election that lawmakers and administrators propose for jurisdictions with sizable minority populations. In these locations, racial bloc voting often occurs, and electoral schemes that favor majorities are likely to negatively affect cohesive minority communities. We find that at least 329 laws or proposals that would have changed the method of a jurisdiction's election system have been invalidated by a court or the DOJ, or amended or withdrawn by responsible lawmakers, because of their discriminatory intent or effects since 1982.

Redistricting After Significant Demographic Change

Like changes to methods of election, redistricting changes can alter the practical effect of participation by voters of color without directly preventing those voters from active involvement in elections. Legislators and their advisors have often created redistricting plans with relatively little public involvement or engagement. For most residents in jurisdictions, the details and effects of district plans are not easy to decode. Their indirect and obscure nature enhances the attractiveness of the redistricting process as a potential tool for limiting emerging communities' political influence. In addition, the practical necessity of regular redistricting to ensure representation based on population change has contributed to the rise of a long and prolific history of intentional design of electoral districts to reduce underrepresented communities' opportunities to elect candidates of choice.

Discriminatory Intent and Effect

Discrimination in redistricting commonly occurs when minority communities that are connected geographically, linguistically, and by culture and interest are prevented from electing the candidates of their choice through two different methods. In some cases, these populations are dispersed between multiple districts to prevent the presence of a large enough population in any single district for the minority community to determine or influence the outcome of elections. In other cases, minority communities are concentrated in a single or small number of districts in a way that artificially limits their impact on election outcomes.

³¹ Ernest I. Herrera, Mexican American Legal Defense and Educational Fund, Written Testimony Submitted in Connection with Oversight Hearing of the House Judiciary Committee on Enforcement of the Voting Rights Act in Texas 5-6, May 3, 2019, <https://docs.house.gov/meetings/JU/JU10/20190503/109387/HHRG-116-JU10-Wstate-HerreraE-20190503.pdf>

Redistricting plans that dilute the votes of underrepresented communities are most likely to have discriminatory effects in diverse jurisdictions with sizable minority populations, and are most likely to be adopted where those minority populations reach critical mass or mobilize effectively to exercise their potential political influence. For example, 86 percent of DOJ's objections to intentionally discriminatory redistricting plans lodged between 1982 and 2013 concerned jurisdictions in which at least two racial or ethnic groups each made up at least 20 percent of voting-age population, according to our original analysis of a list of objections compiled by the Lawyers Committee for Civil Rights Under Law.

Policymakers have designed and adopted redistricting plans with explicit reference to and implicit understanding of their potential negative effects on historically underrepresented communities. As former Member of the U.S. Commission on Civil Rights Abigail Thernstrom once wrote, "[Southern politicians] realized that while it had become nearly impossible to limit black voters' access to the ballot box, it was still possible to limit the power of the votes they cast. And in the years immediately following the enactment of the Voting Rights Act, a growing number of southern jurisdictions...reconfigured state legislative districts...in an effort to reduce the effect of the newly surging black vote and to maintain white supremacy."³² Within the most recent decade, redistricting for racial ends has continued, with Americans recently learning that deceased redistricting expert Thomas Hofeller advised state legislatures in North Carolina, Texas, Missouri, Virginia, and elsewhere and used race as a primary factor to design maps that would limit the influence of minority communities.³³ In another contemporary incident, former Member of Congress Mel Watt testified in a lawsuit concerning post-2011 redistricting in North Carolina that a mapmaker had told him that he was drawing boundaries to create a district with a designated percentage of its electorate from a minority community; Congressman Watt's testimony helped the Supreme Court conclude that the resulting plan was unconstitutional.³⁴

When lawmakers have adopted redistricting plans to limit minority voters' influence as they are poised to exercise it, they have frequently failed to justify their decisionmaking in race-neutral terms. Boundaries that reviewing courts found proponents could not explain except as attempts to empower particular racial groups have been described as bearing "uncomfortable resemblance to political apartheid"³⁵ and "extreme and bizarre"³⁶. Discriminatory redistricting plans that restrain emerging communities' political influence create obvious mismatches

³² Abigail Thernstrom, "Redistricting, Race, and the Voting Rights Act," NATIONAL AFFAIRS (Spring 2010), <https://www.nationalaffairs.com/publications/detail/redistricting-race-and-the-voting-rights-act>

³³ E.g., David Daley, "GOP Racial Gerrymandering Mastermind Participated in Redistricting in More States Than Previously Known, Files Reveal," THE INTERCEPT (September 23, 2019), <https://theintercept.com/2019/09/23/gerrymandering-gop-west-virginia-florida-alabama/>

³⁴ Daniel Tokaji, "Restricting Race-Conscious Redistricting," THE REGULATORY REVIEW (July 31, 2017), <https://www.theregreview.org/2017/07/31/tokaji-restricting-race-conscious-redistricting/>; *Cooper v. Harris*, 581 U.S. ____ (2017).

³⁵ Nina Totenberg, "Questions of Race and Redistricting Return to the Supreme Court," NPR MORNING EDITION (December 5, 2016), <https://www.npr.org/2016/12/05/504188630/questions-of-race-and-redistricting-return-to-the-supreme-court>

³⁶ *Bush v. Vera*, 517 U.S. 952, 971 (1996).

between the preferences of the electorate and the officials who represent them, where minority community members' preferences depart from those expressed by white majorities.

Discriminatory Redistricting in Action

In 2011, as Texas undertook redistricting for Congressional and state legislative seats, the state's rapid Latino population growth had resulted in gain of four additional seats in Congress. Yet the new district map ultimately approved by the Texas Legislature failed to create even one new district in which Hispanic or other minority voters were likely to have the opportunity to elect the candidate of their choice. A federal district court reviewing the plan found clear evidence that the maps had been enacted with intent to discriminate against Latinos and African Americans, pointing to email messages between legislative staff that revealed plotting to move important landmarks and actively voting minority communities from districts in which minority voters were previously able to exert notable influence.³⁷ About 60 percent of Dallas County districts for the Texas House would have contained white majorities even though white voters only constituted about one-third of the County's electorate; districts themselves appeared "jagged [and] bizarrely shaped."³⁸ "The only explanation Texas offers for this pattern is 'coincidence', but if this was coincidence, it was a striking one indeed," U.S. Circuit Judge Thomas B Griffith noted.³⁹

Under the weight of pre-*Shelby County* administrative and court decisions invalidating its 2011 redistricting plans because of their discriminatory purpose, the Texas legislature eventually adopted a court-originated interim map in 2013. Further litigation and more findings that these subsequent maps repeated discriminatory features of the original maps ensued. The matter was not concluded until the Supreme Court issued a final decision in 2018 which had the effect of approving many of the districts adopted in 2013, and some that courts had ordered in intervening years to ensure fair opportunity to elect representatives in communities of Latino voters. The Supreme Court could not find discriminatory purpose in the legislature's adoption of the 2013 map, but did not disturb or dispute the determination that 2011 maps were infected with discriminatory intent to limit the influence of voters of color.

The Known Practice of Discriminatory District Design

The Voting Rights Advancement Act would require preclearance of redistricting plans that are adopted in diverse jurisdictions in the wake of significant demographic

³⁷ Memorandum Opinion, *Texas v. United States*, No. 11-1303 (TBG-RMC-BAH) (D. D.C. 2012), <http://electionlawblog.org/wp-content/uploads/texas-redistricting-district-court.pdf>

³⁸ Jose Garza, Mexican American Legislative Caucus, Texas House of Representatives, Written Testimony Submitted in Connection with Oversight Hearing of the House Judiciary Committee on Enforcement of the Voting Rights Act in Texas 10, May 3, 2019, <https://docs.house.gov/meetings/JU/JU10/20190503/109387/HHRG-116-JU10-Wstate-GarzaJ-20190503.pdf>

³⁹ Robert Barnes, "Texas redistricting discriminates against minorities, federal court says," WASHINGTON POST (August 28, 2012), https://www.washingtonpost.com/politics/texas-redistricting-discriminates-against-minorities-federal-court-says/2012/08/28/f6e6a2e0-f156-11e1-892d-bc92fee603a7_story.html

change. In these conditions, the process of redesigning electoral boundaries inherently features greatest likelihood of discriminatory effect, and circumstances closely resemble those that have inspired lawmaking with discriminatory purpose over the course of the VRA's history. Preclearance coverage would ensure that an electoral change whose discriminatory history is tied to its secretive nature is subjected to greater public scrutiny.

According to our research, at least 389 attempts to adopt discriminatory redistricting plans that would have diluted underrepresented voters' voices have been invalidated by a court or DOJ, or amended or withdrawn by responsible lawmakers, because of their discriminatory intent or effects since 1982.

Annexations and Deannexations that Change the Composition of the Electorate

Annexations and deannexations change the composition of the electorate eligible to vote in a given jurisdiction, and like redistricting and changes in method of election, they can diminish the political influence of racial and ethnic communities without explicitly declaring those intentions. When policymakers have altered municipal boundaries to selectively include or exclude certain populations, their efforts have had significant social impacts beyond their effect of excluding people living outside a town or district from elections. Communities of color intentionally excluded from a given jurisdiction lose access to infrastructure and services like trash collection and fire department protection, in addition to their voice in political affairs. Their home values may decrease and exposure to health risk increase incidental to their political exclusion. Racial and ethnic patterns in annexation decisions also reinforce social notions of the value and character of neighborhoods that have hurt underrepresented Americans and cemented disparities in access to employment, education, and other important opportunities for social and economic mobility.

Discriminatory Intent and Effect

Civil rights laws' early successes inspired the use of second-generation tactics to covertly suppress the political voice of emerging communities, while enduring residential racial segregation and racially polarized voting have made it possible for annexations and deannexations to become a recurring method of vote dilution. The dissimilarity index, a measure of how many people would need to move to achieve perfect integration, has improved for American cities between 1970 and 2010, but it is still true that in the typical urban area, well more than half of black residents would have to move residences to undo unnatural racial segregation.⁴⁰ Patterns of similar voting by groups of people who share minority racial and ethnic backgrounds also persist nationally⁴¹ and in discrete jurisdictions⁴². As a result of these phenomena,

⁴⁰ THE ECONOMIST, "Segregation in America," (April 4, 2018), <https://www.economist.com/graphic-detail/2018/04/04/segregation-in-america>

⁴¹ E.g., Zack Beauchamp, "The midterm elections revealed that America is in a cold civil war," Vox (November 7, 2018), <https://www.vox.com/midterm-elections/2018/11/7/18068486/midterm-election-2018-results-race-surburb>

⁴² Philip Bump, "Mississippi's special election is taking place in one of the most racially polarized states in the country," THE WASHINGTON POST (November 23, 2018),

officials who perceive political threat from cohesive populations of color can isolate those disfavored groups using geographic criteria, and design interventions with precision to achieve desired political results.

Lawmakers pursuing discriminatory ends through annexation and deannexation have circumvented places with significant minority populations and gone to extraordinary lengths to add white neighborhoods to their numbers. For example, in 1972, Lake Providence, Louisiana's population was evenly divided between white and African American communities. Two nearby areas requested annexation by Lake Providence; one had a largely African American population while the other was majority white. Lake Providence incorporated the white area and rejected the request from the African American area, and its decisions left the town with an electorate featuring a secure white majority.⁴³ Similarly, officials in Augusta, Georgia adopted a policy of rejecting annexations that would alter its racial makeup, and in furtherance of it, conducted community surveys in an effort to identify majority white areas for potential annexation.⁴⁴

Discriminatory annexation plans defy logic, or are adopted by proponents who obscure their true intent. For example, in the landmark case of an Alabama state law redrawing electoral boundaries in the city of Tuskegee, lack of a believable rationale led the court to conclude that a proposed plan violated the 15th Amendment. A deannexation in that case would have transformed a square-shaped boundary into a 28-sided figure that would have excluded much of the city's African American community from its outer limits. *Gomillion v. Lightfoot*, 364 U.S. 339 (1960). In McClellanville, South Carolina, white officials discouraged minority community leaders from requesting annexation, foreshadowing rejection of any proposal that would have altered the town's demographic makeup. However, the same officials lied about those leaders' interest in annexation in submissions to the DOJ, in apparent hope of concealing the officials' racial motivations for resisting annexation.⁴⁵

Annexations and deannexations in diverse jurisdictions tend to disadvantage communities that have historically been targets of discrimination in voting. Sophisticated study of residential files and Census data revealed that over a broad geographic area and multiple individual transactions, communities with African American majority populations were the least likely to be annexed by a larger jurisdiction. Moreover, majority white towns were "much less likely to annex black

<https://www.washingtonpost.com/politics/2018/11/23/mississippi-special-election-is-taking-place-one-most-racially-polarized-states-country/>

⁴³ Department of Justice, Letter to Town of Lake Providence, Louisiana, December 1, 1972,

<https://www.justice.gov/sites/default/files/crt/legacy/2014/05/30/LA-1280.pdf>

⁴⁴ Department of Justice, Letter to Hon. Charles A. DeVaney, Mayor, Augusta, Georgia, July 27, 1987,

<https://www.justice.gov/sites/default/files/crt/legacy/2014/05/30/GA-2170.pdf>

⁴⁵ Department of Justice, Letter to Philip A. Middleton, Attorney at Law, re: the Town of McClellanville, South Carolina, May 6, 1974, <https://www.justice.gov/sites/default/files/crt/legacy/2014/05/30/SC-1090.pdf>

populations" even where a potential annexation would not have created a new black majority.⁴⁶

Discriminatory Annexation in Action

The City of Hanford in Kings County, California sits in the San Joaquin Valley, a rich agricultural region whose population has diversified significantly in recent decades with ebbs and flows of farmworker migration. Its Asian and Latino populations have been growing relative to populations of other races and ethnicities. Against this backdrop, Hanford submitted 73 proposed annexations for preclearance in 1992. Some of these had been adopted and implemented without being precleared, despite their significant impact on the Hanford electorate: the DOJ noted disapprovingly that "nearly half of the city's...population reside[d] in these unprecleared annexed areas."⁴⁷

In a letter objecting to their implementation, DOJ raised acute concerns with the series of annexations that Hanford seemingly had sought to hide. In aggregate, the addition of designated areas reduced the Latino proportion of city's population by 6.5 percentage points. At the time, the city held at-large elections with staggered terms, and Latino voters had failed under that system to elect candidates of their choice because voting was racially polarized and dominated by the white majority that the annexations had reinforced.⁴⁸ Annexations to the city went forward after it adopted a system of single-member district elections that extended electoral opportunities to underrepresented components of the city's population; today, two Latino members sit on the Hanford City Council.

The Known Practice of Annexing or Deannexing Neighborhoods to Diminish Minority Voters' Influence

The Voting Rights Advancement Act would require preclearance of proposed annexations and deannexations only where a proposed change would significantly alter the racial or ethnic composition of the electorate in a diverse jurisdiction. The law would cover changes that would decrease by at least 3 percent a racial, ethnic, or language minority group's share of a jurisdiction's voting-age population, in a jurisdiction in which multiple racial or ethnic groups each constitute at least 20 percent of voting-age residents, or a single language minority group accounts for at least 20 percent of voting-age residents on Indian land. This formula focuses tightly on boundary changes that have an established pattern of discriminatory purpose and effect based in their context. According to our research, at least 62 proposals to annex or deannex specified territory that would have diluted underrepresented voters' voices have been invalidated by a court or the DOJ, or amended or withdrawn by responsible lawmakers, because of their discriminatory intent or effects since 1982.

⁴⁶ *E.g.*, Daniel T. Lichter, Domenico Parisi, Steven Michael Grice, and Michael Taquino, "Municipal Underbounding: Annexation and Racial Exclusion in Small Southern Towns," 72 *Rural Sociology* 47 (March 2007), <https://eric.ed.gov/?id=EJ806506>

⁴⁷ Department of Justice, Letter to Michael J. Noland, Esq. re: the City of Hanford, California, April 5, 1993, <https://www.justice.gov/sites/default/files/crt/legacy/2014/05/30/CA-1040.pdf>

⁴⁸ *Id.*

Restrictive Identification and Proof of Citizenship Requirements

At the outset of the VRA era, lawmakers often imposed prerequisites to registering or voting that went above and beyond the legal minimum qualifications of adulthood and U.S. citizenship. By design, these laws demanded actions that underrepresented voters were disproportionately unable to take, such as payment of poll taxes, and demonstration of English literacy. After federal protections of the equal right to vote evolved to specifically prohibit prerequisites like these, some states and localities responded by accelerating adoption of a similar alternate: strict documentary identification requirements to register or vote. The nation's first statewide proof of citizenship mandate for registering voters became law in Arizona in 2004, and the first statewide strict voter ID requirements appeared in 2005 in Indiana and Georgia, on the heels of the Help America Vote Act of 2002's codification of non-photo identification requirements for certain newly-registered voters.

Discriminatory Intent and Effect

A growing body of evidence demonstrates the discriminatory intent and effects of voter ID laws. Observers have inferred discriminatory intent from the lack of reasonable justification for imposition of ID requirements. No proponent of strict ID has ever produced credible evidence of widespread impersonation fraud in the registration or voting processes that identification checks would prevent. It is unlikely that individuals pretending to be either qualified unregistered citizens or actual registered voters could alter the outcome of an election without extraordinary effort. At the same time, voter participation rates have declined from the 1950s to the 2010s.⁴⁹ American democracy has not suffered because too many citizens have voted, but because too few have. Fraud fails as justification for imposing additional administrative burden and cost on the voting process.⁵⁰

Insiders' comments strongly suggest that strict identification requirements' goal is to impede voter participation. For example, North Carolina political consultant Carter

⁴⁹ Census Bureau, Current Population Survey, Reported Voting and Registration by Race, Hispanic Origin, Sex and Age Groups: November 1964 to 2018 (Table A-1), <https://www.census.gov/data/tables/time-series/demo/voting-and-registration/voting-historical-time-series.html>

⁵⁰ The National Conference of State Legislatures (NCSL) counseled its members in a June 2014 memorandum that states implementing more exacting voter ID rules must expect to have to spend on providing free voter ID cards, enhanced voter education and public outreach, creation of election materials, and increased poll worker training time and wages. In addition, NCSL noted that many states had found it necessary to spend potentially significant sums on litigation, expanding access to IDs, and other administrative requirements embedded in enacting legislation, such as a New Hampshire mandate that election officials send postcards to voters completing affidavits in lieu of showing ID. Actual expenditures on these items have been and may be significant: the State of Indiana reported spending \$10,023,221 between 2007 and 2010 merely to provide free ID cards to qualified voters. The State of South Carolina spent more than \$3.5 million to defend its voter ID law against challenges lodged by the DOJ and aggrieved citizens. The Kansas Secretary of State's office spent \$310,000 on just one component of its public outreach campaign, the creation of a website to explain new voter ID laws. Karen Shanton and Wendy Underhill, National Conference of State Legislatures, *Costs of Voter Identification* (June 2014), http://www.ncsl.org/documents/legismgt/elect/Voter_ID_Costs_June2014.pdf

Wrenn said of related developments in his state, “Of course [voter ID laws are] political. Why else would you do it?”⁵¹ Former Wisconsin legislative staffer Todd Allbaugh revealed that he “was in the closed Senate Republican Caucus when the final round of multiple Voter ID bills were being discussed. A handful of the GOP Senators were giddy about the ramifications and literally singled out the prospects of suppressing minority and college voters.”⁵² Former Florida political operative and state Republican Party chair Jim Greer told *The Palm Beach Post* in 2012 that advocates he had worked with hoped to suppress voter turnout rather than solve any legitimate weakness in election administration by pushing for restrictions on voting, stating, “They never came in to see me and tell me we had a fraud issue. It’s all a marketing ploy.”⁵³ Then-Texas State Representative Todd Smith once acknowledged, “If the question is are the people that do not have photo IDs more likely to be minority than those that are not, I think it’s a matter of common sense that they would be.”⁵⁴

Unfortunately, restrictive identification requirements are an effective surgical method of making voting more difficult for disfavored voters. A long line of surveys and studies has consistently shown that potential African American, Latino, Native American, and other underrepresented voters disproportionately lack the identification documents they may need to register and to vote in person, and disproportionately face barriers to obtaining required identification.⁵⁵ Voters of color disproportionately experience the discouraging effects of ID requirements in polling places: for example, exit surveys of Texan, Pennsylvanian, and Virginian voters conducted after adoption of stricter voter ID requirements revealed that black voters were 4.5 times more likely than non-black voters to have been unable to vote because of an ID-related problem; in the Dallas area, the individuals who reported inability to vote because of ID issues were exclusively black and Latino voters.⁵⁶

Tests have found that voters of color are more likely to be asked for identification than white voters, and even that election administrators were relatively less likely to respond to requests for information about identification requirements when they came from Latino aliases.⁵⁷ It is therefore regrettably unsurprising that polls and

⁵¹ William Wan, “Inside the Republican creation of the North Carolina voting bill dubbed the ‘monster’ law,” *WASHINGTON POST* (September 2, 2016), https://www.washingtonpost.com/politics/courts_law/inside-the-republican-creation-of-the-north-carolina-voting-bill-dubbed-the-monster-law/2016/09/01/79162398-6adf-11e6-8225-fbb8a6fc65bc_story.html

⁵² Michael Wines, “Some Republicans Acknowledge Leveraging Voter ID Laws for Political Gain,” *N.Y. TIMES* (September 16, 2016), <https://www.nytimes.com/2016/09/17/us/some-republicans-acknowledge-leveraging-voter-id-laws-for-political-gain.html>

⁵³ *Id.*

⁵⁴ *Veasey v. Perry*, 71 F. Supp.3d 627, 657 (S.D. Tex. 2014).

⁵⁵ *E.g.*, S. GOV’T ACCOUNTABILITY OFF., ISSUES RELATED TO STATE VOTER IDENTIFICATION LAWS 34-43, GAO-14-634, Sep. 2014, <http://www.gao.gov/assets/670/665966.pdf> (citing previous published studies and original research).

⁵⁶ Kelly S. McConville, Lynne Stokes, and Mary Gray, “Accumulating Evidence of the Impact of Voter ID Laws: Student Engagement in the Political Process,” 5 *Statistics and Public Policy* 1 (January 15, 2018).

⁵⁷ *E.g.*, R. Michael Alvarez, Stephen Ansolabehere, Adam Berinsky, Gabriel Lenz, Charles Stewart III, Thad Hall, 2008 *Survey of the Performance of American Elections: Final Report 3*, https://elections.delaware.gov/pdfs/SPAE_2008.pdf; Lonna Rae Atkeson, Yann P. Kerevel, R. Michael Alvarez, and Thad E. Hall, “Who Asks For Voter Identification? Explaining Poll-Worker Discretion,” 76 *J.*

surveys conducted after the 2014 and 2016 elections consistently indicated that strict voter ID requirements disproportionately lowered minority turnout. For example, post-election surveys conducted in Texas by Professors Jim Granato and Renée Cross of the University of Houston and Mark P. Jones of Rice University revealed that in the state's 23rd Congressional District and in Harris County, Latino non-voters were substantially more likely than white non-voters to cite lack of a qualifying ID as a principal reason for their non-participation, even though strong majorities of people queried actually had a qualifying ID.⁵⁸

Discriminatory Identification Requirements in Action

In 2006, Ohio enacted legislation that directed poll workers to require certain naturalized voters to present proof of U.S. citizenship before providing them with ballots or approving their provisional votes to be counted. The law would have applied to any voter challenged on the basis of his or her citizenship, and would have required election judges processing challenges to distinguish between native-born and naturalized citizens, and to single out naturalized Americans for extra scrutiny. Whereas native-born Americans would not have been subject to demands for documentation, any challenged voter who professed to be a naturalized citizen would have been asked to immediately produce proof of citizenship, or in the alternative, to vote a provisional ballot that would only be counted if she or he displayed proof of citizenship to an election official within ten days of attempting to vote. Prior to adoption of this legislation, Ohio law allowed any challenged naturalized voter to swear an oath affirming his or her citizenship in lieu of producing original documentation.

Ohio's voter challenge provision had a long history of being used discriminatorily, and demographic realities ensured that 2006 amendments to it would have had a disparate negative impact on voters of color. For example, as plaintiffs explained in their argument for an injunction, the state legislature had amended the same statute in 1868 to create a specialized mechanism for challenging voters with a "distinct and visible admixture of African blood," on the explicit basis of their race. In 2004, several Ohio voters pre-emptively filed suit to block an impending campaign to challenge voters at selected precincts serving populations of largely African American voters. As of 2006, naturalized Ohioans were far more likely than all eligible voters to be historically underrepresented people of color: according to the Census Bureau's American Community Survey 1-year data, whereas African Americans, Latinos, and Asian Americans constituted just 14.3 percent of the state's eligible electorate that year, they accounted for 47.8 percent of naturalized Ohioans eligible to cast ballots, who were potentially subject to additional restrictions on the franchise.

OF POLITICS 944 (October 2014); Ariel R. White, Noah L. Nathan, and Julie K. Faller, "What Do I Need to Vote? Bureaucratic Discretion and Discrimination by Local Election Officials," 109 AM. POL. SCI. REV. 129 (February 2015).

⁵⁸ Mark P. Jones, Jim Granato, and Renée Cross, *The Texas Voter ID Law and the 2016 Election: A Study of Harris County and Congressional District 23* (April 2017), <http://www.uh.edu/hobby/voterid2016/voterid2016.pdf>; Mark P. Jones, Jim Granato, and Renée Cross, *The Texas Voter ID Law and the 2014 Election: A Study of Texas's 23rd Congressional District* (Aug. 2015), <https://www.bakerinstitute.org/media/files/files/e0029eb8/Politics-VoterID-Jones-080615.pdf>.

In light of its potential to significantly increase racial and ethnic profiling of Ohio voters, and its likely discriminatory effects, a federal court granted a permanent injunction invalidating this law in October of 2006. *Boustani v. Blackwell*, 460 F. Supp. 2d 822, 825-27 (N.D. Ohio 2006). Despite its confirmed unconstitutionality, the statute remains on the books and even underwent minor amendments in 2012. Ohio Rev. Code Ann. § 3505.20(A).

The Known Practice of Imposing Unjustified, Unnecessary Identification Requirements on Intending Voters

The Voting Rights Advancement Act would require jurisdictions to obtain preclearance of any proposed restrictive identification prerequisites to registration that are more exacting than those in effect on the bill's effective date. The preclearance requirement would also apply to any proposed identification prerequisites to obtaining a ballot that are more restrictive than the Help America Vote Act's (HAVA) requirements for first-time voters who have not yet conveyed to officials either their state identification card number or last four digits of their Social Security number.

The recent wide proliferation of such discriminatory laws mitigates in favor of subjecting them to advance scrutiny. According to the National Conference of State Legislatures, prior to 1965 only one state – South Carolina – had a law in effect requiring any particular documentation of intending voters. This law was not yet a strict requirement in 1965, as it merely mandated requests for documents bearing voters' names. As of 1980, just five states had some form of an identification requirement for voters on their books; thereafter, however, the adoption of restrictive voter identification mandates began to spread noticeably. During the VRA's modern era, between 1982 and 2019, more than half of all states, and a number of political sub-jurisdictions, adopted stronger identification prerequisites for voters that threatened to deprive qualified American voters of the franchise.⁵⁹ According to our research, at least 26 laws that would have toughened voter ID requirements have been invalidated by a court or the DOJ, or amended or withdrawn by responsible lawmakers, because of their discriminatory intent or effects since 1982.

Polling Place Closures and Realignment

In 2019, in-person voting at temporary polling places is the primary way many citizens cast ballots in American elections. Many members of the electorate derive unique and enduring benefit from the experience of in-person voting. Voters at polling places generally are confident that their ballots have been received and counted because they have observed the process and equipment. These voters enjoy camaraderie with fellow voters, as well as the opportunity to demonstrate their civic responsibility before assembled members of their communities. In-person voters can take advantage of interpretation services offered on location, which can be crucial to casting an informed vote for Americans not yet fully fluent in English.

⁵⁹ National Conference of State Legislatures, Voter ID History (May 31, 2017), <http://www.ncsl.org/research/elections-and-campaigns/voter-id-history.aspx>

For many voters in jurisdictions that restrict absentee voting, the ability to access polling places still determines whether or not participation in elections is a possibility.

In sum, consistently large numbers of eligible voters cast ballots in-person, and depend entirely upon the ability to find and physically access polling places in order to do so. Percentages of all voters who have voted in person have remained consistent or risen in recent years: according to the Election Assistance Commission, 71.1 percent of 2014 voters and 73.1 percent of 2018 voters visited a polling place.⁶⁰ In recognition of this reality, people intent on limiting the electoral influence of underrepresented communities have used manipulation of the number and location of polling places as a tool of discrimination.

Discriminatory Intent and Effect

Demand for polling resources is trending upward. Our nation's population continues to increase: in 2005, the first year for collection of annual American Community Survey data, there were just over 197 million adult U.S. citizens eligible to vote. By 2017, there were more than 231 million adults eligible to vote.⁶¹ The number of potential naturalized voters alone increased by about 50 percent during this 12-year window. Over the course of the past 54 years, with the VRA in effect, voter participation rates among members of historically excluded communities have increased exponentially, although disparities persist in voter participation rates between people of varying races and ethnicities.

At a time when our electorate is larger and more diverse than ever before, and given that so many voters need, or prefer, to vote in-person at a polling place, it is difficult to rationalize the extremely disturbing trend among a significant number of jurisdictions to reduce the number of polling places available to voters. For example, in just 757 counties formerly covered under Section 5 of the VRA, there were 1,688 fewer polling places in 2018 than in 2012.⁶²

Unfortunately, in addition to neglecting indicators of significant need for accessible in-person voting, polling place relocation plans frequently move voting further from communities of color, even though members of those communities have less access to transportation⁶³ and less flexibility to set aside work and family-related obligations⁶⁴ to travel to and wait at polling locations. Potential voters remain likely

⁶⁰ U.S. Election Assistance Commission, *Election Administration and Voting Survey: 2018 Comprehensive Report 20* (June 2019), https://www.eac.gov/assets/1/6/2018_EAVS_Report.pdf

⁶¹ Census Bureau, American Community Survey, Sex by Age by Citizenship Status, 2005 and 2017 American Community Surveys, 1-year data (Table B05003).

⁶² Leadership Conference Fund, *Democracy Diverted: Polling Place Closures and the Right to Vote 10* (September 2019), <http://civilrightsdocs.info/pdf/reports/Democracy-Diverted.pdf>

⁶³ As of 2015, just 6.5 percent of non-Hispanic white households, but 19.7 percent of African American households, 12 percent of Latino households, 11.3 percent of Asian/Pacific Islander households, and 13.6 percent of Native American households lacked access to a private vehicle. National Equity Atlas, Policylink, USC Program for Environmental and Regional Equity, "Indicators: Car Access" (2015), https://nationalequityatlas.org/indicators/Car_access

⁶⁴ Terence M. McMenamin, "A time to work: recent trends in shift work and flexible schedules," *Monthly Labor Review* 8 (Dec. 2007), <https://goo.gl/g1aPsR>; Census Bureau, Current Population Survey 2018 Annual Social and Economic Supplement, Average Number of People per Family Household With Own

to experience negative effects of polling place closures that vary in likelihood and severity according to their race and ethnicity, because, as a 2018 Washington Post headline stated, “America is more diverse than ever – but still segregated.”⁶⁵ Americans are more likely than not to live near others who predominantly share the same race and ethnicity.⁶⁶ The geographic concentration of communities of color makes it more likely that many minority voters suffer when a polling places closes, and more likely that decisionmakers purposefully or incidentally put minority voters at disadvantage by withdrawing resources from their communities.

For example, in 2014, county boards of election across the state of North Carolina changed the locations of about one-third of early voting polling places. Researchers who calculated registered voters’ resulting distance to travel to a new location found that the average white voter’s distance from the nearest early voting site had increased by just 26 feet, while the average black voter’s distance from the nearest early voting site had increased by a quarter of a mile.⁶⁷

In Alaska, numerous Native American voters live in rural, geographically isolated locations, and have found themselves at risk of being effectively barred from voting by proposed polling place closures and consolidations such as a series of changes proposed in 2008 that would have assigned some voters to sites they could only reach by plane.⁶⁸ These proposals were the latest in a string of similar practices that left 24 Alaska Native villages without any polling place in 2004; they were withdrawn only after the DOJ refused to preclear the closures and demanded more information about their effects on isolated voters.⁶⁹

Discriminatory Polling Place Closures in Action

In 2006, authorities moved to adopt a series of significant changes to the election of governors of the North Harris Montgomery Community College District near Houston. Among them were dramatic proposed changes to polling place locations: authorities sought to move the election for seats on the Board of Trustees to a new date, and to open just 12 polling places for that election, instead of the total for the previous Board election of 84 polling places.

Children Under 18, by Race and Hispanic Origin, Marital Status, Age, and Education of Householder (Table AVG3); Family Caregiver Alliance, *Caregiver Statistics: Demographics* (2016), <https://www.caregiver.org/caregiver-statistics-demographics>

⁶⁵ Aaron Williams and Armand Emamdjomeh, “America is more diverse than ever - but still segregated,” THE WASHINGTON POST (May 10, 2018),

<https://www.washingtonpost.com/graphics/2018/national/segregation-us-cities/>

⁶⁶ Solomon Greene, Margery Austin Turner and Ruth Gourevitch, “Racial Residential Segregation and Neighborhood Disparities,” (August 29, 2017), <https://www.mobilitypartnership.org/publications/racial-residential-segregation-and-neighborhood-disparities>

⁶⁷ William Busa, insightus, *North Carolina’s Shell Game of Electoral Apartheid: How the Board of Elections Shoved Black Voters Away From the Ballot Box in 2014* (November 23, 2015), https://insight-us.org/fair_places.html

⁶⁸ Amici Curiae Brief of the Alaska Federation of Natives, Alaska Native Voters and Tribes in Support of Respondents 21-23 (filed February 1, 2013), *Shelby County v. Holder*, No. 12-96, https://www.narf.org/bloglinks/shelby_county_brief.pdf

⁶⁹ *Id.*

Details of the plan for locating the smaller number of polling sites created additional constitutional concern. At the time that changes were proposed, there were more than 540,000 registered voters eligible to cast ballots for seats on the Board of Trustees; therefore, 12 polling sites would have each served a staggering average of 45,000 potential voters each, residing in a geographic area covering more than 1,000 square miles. Worse yet, the polling place locations chosen reflected severe racial and ethnic disparity. While the proposed location to which the smallest proportion of voters of color were assigned would have served about 6,500 voters, the proposed location that was assigned the largest proportion of people of color would have served more than 67,000 voters.

The DOJ concluded that the proposed consolidation of polling places for District elections was intentionally discriminatory.⁷⁰ In the following years, advocates also successfully challenged the use of at-large elections for seats on the District's Board of Trustees. Because of the protections afforded by the VRA, the Board today includes two Latino members and two African American members.

The Known Practice of Closing and Relocating Polling Places to Increase the Distance Between Ballot Boxes and Communities of Color

The Voting Rights Advancement Act would require jurisdictions to obtain preclearance of proposed reductions and relocations of polling places that would affect Census tracts with diverse populations, as well as reservations and land trust areas in which at least 20 percent of adult residents are members of a language minority group. The bill targets for scrutiny changes that would lessen the number of locations serving geographic concentrations of historically underrepresented voters. At their worst, actual proposals to relocate polling places that have arisen during the VRA era would have made it virtually impossible for voters of color to exercise the franchise, and our democratic system cannot tolerate elections that incorporate such impenetrable barriers to the ballot, particularly those that discriminatorily affect voters from language and racial minority communities.

According to our research, at least 33 attempts to move or consolidate polling locations have been invalidated by a court or the DOJ, or amended or withdrawn by responsible lawmakers, because of their discriminatory intent or effects since 1982.

Withdrawals of Multilingual Materials and Assistance

Throughout the United States' history, authorities have overtly and implicitly conditioned access to the polls on linguistic ability and literacy as a proxy for characteristics including race and national origin. Connecticut adopted the nation's first statewide voter literacy test in 1855, and went on to apply its restriction on voter access to people disfavored both because they were relatively less-educated and because of their minority race, ethnicity, and national origin, including a group of farmworkers of Puerto Rican origin who were ruled ineligible to vote in Windsor,

⁷⁰ Department of Justice, Letter to North Harris Montgomery Community College District, May 5, 2006, <https://www.justice.gov/sites/default/files/crt/legacy/2014/05/30/TX-2960.pdf>

Connecticut in 1956.⁷¹ South Carolina adopted an “eight box law” in 1882 that mandated use of different ballot boxes for different races, such that ballots were not counted unless voters matched the correct ballot to the correct receptacle by reading signage.⁷² The state of New York adopted a targeted English literacy requirement for voters in 1921, in the midst of accelerated Puerto Rican migration into the state.⁷³

Although federal law now prohibits literacy tests and outright prohibitions on voting based on linguistic ability, voters who are not yet fully fluent in English remain numerous, and vulnerable to disenfranchisement grounded in inability to navigate English-only election procedures. As of 2018, Census data indicate that more than 37 million American adults speak a language other than English, and more than 11.4 million of them are not yet fully fluent in English. Someone who cannot access a ballot or voting instructions in a language she or he can read is unlikely to attempt to vote, and experience confirms that voters who are perceived as members of language minority communities, or who are not fluent in English, are less likely to vote and more likely to encounter hostility at the polls than voters comfortable in English.

Discriminatory Intent and Effect

Denials of and other barriers to language assistance in elections arose at a time when elected officials and election administrators were less likely to obscure their discriminatory intent than they are today, and their history reveals their modern-day purpose. For example, Civil War-era debate of voting qualifications and procedures featured explicit substitution of the concept of literacy for race, as where U.S. Senator Lot Morrill proposed to replace the word “white” with “literate” in a clause that would have limited exercise of the franchise in the District of Columbia to select adult male residents.⁷⁴

A pair of 1905 editorials in support of Arizona’s English literacy requirement stated, first, that “There is a foreign element in our voting population which is both illiterate and ignorant of our institutions,” and, eleven days later, that, “We are referring, or course, to the ignorant Mexican vote.”⁷⁵ One of the delegates who debated what became New York’s constitutional English literacy requirement for voters stated, in 1915, “More precious even than the forms of government are the mental qualities of

⁷¹ Connecticut Humanities, Literacy Tests and the Right To Vote (November 5, 2018),

<https://connecticuthistory.org/literacy-tests-and-the-right-to-vote/>

⁷² Merrill Fabry, A Brief History of Voting Problems on Election Day, TIME (November 8, 2016),

<https://time.com/4531415/history-voting-problems-election-day/>

⁷³ E.g., Juan Cartagena, “Puerto Ricans and the 50th Anniversary of the Voting Rights Act,” Centro Voices e-Magazine, Center for Puerto Rican Studies, Hunter College, CUNY (August 2015),

<https://centropr.hunter.cuny.edu/centrovoices/current-affairs/puerto-ricans-and-50th-anniversary-voting-rights-act>

⁷⁴ Kirk Branch, “A Mockery in the Name of a Barrier”: Literacy Test Debates in the Reconstruction-Era Congress, 1864-1869,” 3 Literacy in Composition Studies (2015),

<http://licsjournal.org/OJS/index.php/LiCS/article/view/82/114>

⁷⁵ Antonia Noori Farzan, “Racist History 101: When Arizona Blocked Spanish Speakers From Voting,” PHOENIX NEW TIMES (March 19, 2018), <https://www.phoenixnewtimes.com/news/arizonas-racist-history-blocking-spanish-speakers-from-voting-10239647>

our race. They are exposed to a single danger, and that is that by constantly changing our voting citizenship through the wholesale but necessary and valuable infusion of Southern and Eastern European races, whose traditions and inheritances are wholly different from our own, without education, we shall imperil the structure we have so laboriously struggled to maintain. The danger has begun...We should check it.”⁷⁶

More recently, inference and observation have affirmed the racially and ethnically discriminatory purpose of restrictions on language access. Poll watchers working in south Phoenix, Arizona during the 1964 Presidential election observed white activists – including future Supreme Court Chief Justice Rehnquist – carrying out a systemic effort to selectively challenge black voters and people not yet fully fluent in English to confirm their residences and to read and interpret Constitutional passages to demonstrate sufficient literacy to vote.⁷⁷

As of 1970 – before Congress extended the VRA to protect language minority citizens – Texas had in effect both a law that forbid election administrators from using any language other than English except in limited circumstances, and a law that forbid assistance to any voter except those physically unable to mark ballots. The Court that invalidated the state's prohibition on assistance to illiterate voters noted that evidence showed that “the majority of illiterate voters in Texas are members of the Mexican-American and Negro ethnic groups,” and that “the effect of the statute may be to exclude many Mexican-Americans and Negroes from assistance.” *Garza v. Smith*, 320 F. Supp. 131, 135 (W.D. Tex. 1970).

Efforts to obstruct language assistance and eliminate materials and services in languages other than English have proven in practice to negatively affect voters of color. According to 2017 American Community Survey data, more than half of the adult U.S. citizens most likely to need linguistic assistance with voting are Latino; in total, more than 85 percent of eligible voters who may not be able to cast an informed ballot in English are people of color. People who are not fully confident in their ability in English, and people who speak little or no English, are likely to struggle throughout the duration of the voting process where forced to navigate it without in-language materials or assistance. Successful voting demands voters’ awareness of numerous items of personalized information that can be impossible to obtain across a language barrier, including registration deadline, voting location and hours, and sophisticated understanding of ballot measures and candidates’ policy positions.

The effects of language assistance denials on voters of color are as would be expected, and as described by Richard Salame writing in 2018 for *The Nation*, “[Limited English proficient] voters who aren’t accommodated...often have a difficult time exercising their right to vote. LEP voters have much lower participation rates than non-LEP voters, and studies have shown their participation rate is significantly

⁷⁶ 3 RECORD OF THE CONSTITUTIONAL CONVENTION OF THE STATE OF NEW YORK 1915, BEGUN AND HELD AT THE CAPITOL IN THE CITY OF ALBANY ON TUESDAY THE SIXTH DAY OF APRIL 2912-13 (1915).

⁷⁷ Dennis Roddy, “Just our Bill,” PITTSBURGH POST-GAZETTE (December 2, 2000), <http://old.post-gazette.com/columnists/20001202roddy.asp>

higher where there are language accommodations.”⁷⁸ Numerous researchers concur that where the VRA’s provisions that expand linguistic access to elections apply, they correspond with a positive impact on language minority voting communities’ rates of participation in elections and governance. For example, Latinos who live in jurisdictions that provide Spanish-language election information and assistance are more likely to be registered to vote than Latinos who live in jurisdictions that operate monolingual elections⁷⁹, and more likely to vote as well⁸⁰. Moreover, over the course of the VRA’s language assistance provisions’ existence, language minority community members’ registration and voter turnout rates, and presence in office, have all increased in the aggregate.⁸¹

Discriminatory Denials of Language Assistance in Action

Although its overall population growth has slowed in recent decades, Pennsylvania’s Latino population has grown particularly rapidly. Latino communities have a visible presence in Philadelphia and other urban centers in the state, but also in cities and counties with smaller populations that offer a high quality of life and attractive work opportunities. For instance, the Pew Hispanic Center noted that Luzerne County was one of the ten sub-jurisdictions in the nation with the fastest-growing Latino community between 2007 and 2014.⁸² Over the course of the past three decades, the town of Hazleton in Luzerne County has acquired a majority-Latino population from a start of near-zero.⁸³

The rapid pace of demographic change in some places in Pennsylvania presaged some high-profile negative responses, such as the events of the 2001 and 2002 general elections in Berks County, Pennsylvania. Federal election monitors present during those elections documented a litany of egregious behaviors and obstructions of language assistance which became the basis of a successful VRA lawsuit against the County.

A federal judge overseeing the case found that pollworkers had made audible hostile statements about Latino voters, including, “This is the U.S.A. – Hispanics should not be allowed to have two last names. They should learn to speak the language and we should make them take only one last name,” “No Hispanics wake up before 9:30 a.m.,” and, “They can’t speak, they can’t read, and they come into vote.” Pollworkers

⁷⁸ Richard Salame, “Across the Country, Limited-English-Proficiency Voters Faced Obstacles,” THE NATION (November 12, 2018), <https://www.thenation.com/article/limited-english-proficiency-voters-midterms/>

⁷⁹ E.g., Michael Parkin and Frances Zlotnick, “The Voting Rights Act and Latino Voter Registration: Symbolic Assistance for English-Speaking Latinos,” 36 *Hispanic Journal of Behavioral Sciences* 48 (2014).

⁸⁰ E.g., Michael Jones-Correa, “Language Provisions Under the Voting Rights Act: Effectiveness and Implementation” (testimony presented to a public meeting of the Presidential Commission on Election Administration, Philadelphia, PA, September 4, 2013); Michael Jones-Correa, “Language Provisions Under the Voting Rights Act: How Effective Are They?” 86 *Social Science Quarterly* 549 (2005).

⁸¹ E.g., James T. Tucker, “Enfranchising Language Minority Citizens: The Bilingual Election Provisions of the Voting Rights Act,” 10 *NYU Journal of Legislation and Public Policy* 206 (2006).

⁸² Fast-growing Hispanic counties, *supra* n. 4.

⁸³ Charles F. McElwee, “Chain Migration Comes to Hazleton,” CITY JOURNAL MAGAZINE (Spring 2018), <https://www.city-journal.org/html/chain-migration-comes-hazleton-15832.html>

also demanded photo identification not required by law from Latino voters, and selectively required Latino voters only to confirm their addresses because these individuals were presumed to “move a lot within the housing project.”⁸⁴

Several people reported that pollworkers prevented them from assisting voters not fluent in English, including community activist Luis Pazmino, who was physically pushed by an election judge who told him, “You’re not supposed to be here.”⁸⁵ DOJ officials and community activists had brought these issues to the attention of local authorities and seen them persist, so the Court charged County officials with knowledge that there were problems, and refusal to remedy them.

Concluding that this pattern of hostile treatment had discriminatory effects, the Court granted plaintiffs a preliminary injunction and mandated further negotiation of a specific plan of action to ensure fair treatment of Berks County’s language minority voting population. Thanks to VRA protections, the County today provides extensive information about and assistance with elections in Spanish, and community organizers have declared voter mobilization efforts in 2016 and 2018 successful. “The numbers are unbelievable and show the community came out and voted” in 2018, according to Michael Toledo, CEO of the Daniel Torres Hispanic Center in Reading, Pennsylvania.⁸⁶

The Known Practice of Withdrawing In-Language Materials and Assistance That Are Available in English

The Voting Rights Advancement Act would require jurisdictions to obtain preclearance before discontinuing provision of in-language materials or assistance, and before selectively altering the provision or distribution of materials and assistance in languages other than English. The bill would focus scrutiny on instances in which laws and policy decisions single language minority voters out for less favorable treatment than English-speaking majorities, such as those occasions on which pollworkers purport to apply restrictions against people who offer to interpret for voters with limited proficiency, but do not treat people assisting voters with physical or mental challenges similarly.

According to our research, courts and lawmakers have taken remedial action to combat discriminatory effects or intent in at least 23 instances of obstruction, withdrawal, or severe neglect of language assistance services since 1982. This count of matters litigated excludes charges brought against recalcitrant jurisdictions solely on the basis of Section 4(e), 203, or 208 of the VRA, or any combination thereof, because such matters are commonly resolved absent allegations or findings of retrogression, discriminatory effects, or discriminatory intent.

⁸⁴ *U.S. v. Berks Co.*, 250 F. Supp. 2d 525, 529 (E.D. Pa. 2003).

⁸⁵ *Id.* at 530-31.

⁸⁶ Anthony Orozco, “Latinos encouraged by election turnout in Reading,” *READING EAGLE* (November 10, 2018), <https://www.readingeagle.com/news/article/latinos-encouraged-by-election-turnout-in-reading>

Conclusion

Congress achieved what no other political, social, or moral authority could or had done when it enacted the VRA in 1965, and enhanced its protections in subsequent decades. The VRA has brought about historic progress toward equal participation in elections, and it cemented in place a national consensus in opposition to measures that declared their discriminatory purpose to disenfranchise an American because of her or his race, ethnicity, or linguistic preference. However, the disparities that inspired extraordinary legislative action have not yet disappeared, and the tactics that sustain them are in use in a wider cross-section of our communities than ever before, as voters of color are increasingly present and mobilizing in places that were previously homogeneous. The VRA's tools must be employed as responsively and creatively as are the changes to election policies that some lawmakers employ to silence emerging communities. We urge Congress to enact the Voting Rights Advancement Act and its practice-based preclearance formula to ensure ongoing progress toward democracy that reflects the full diversity of our nation.⁸⁷

⁸⁷ The foregoing testimony is based upon and draws from NALEO Educational Fund's forthcoming report produced in conjunction with Asian Americans Advancing Justice - AAJC and the Mexican American Legal Defense and Educational Fund, "Practice-Based Preclearance: Protecting Against Tactics Persistently Used to Silence Minority Communities' Voices." We extend our grateful thanks to our partners for permitting us to republish portions of the report.