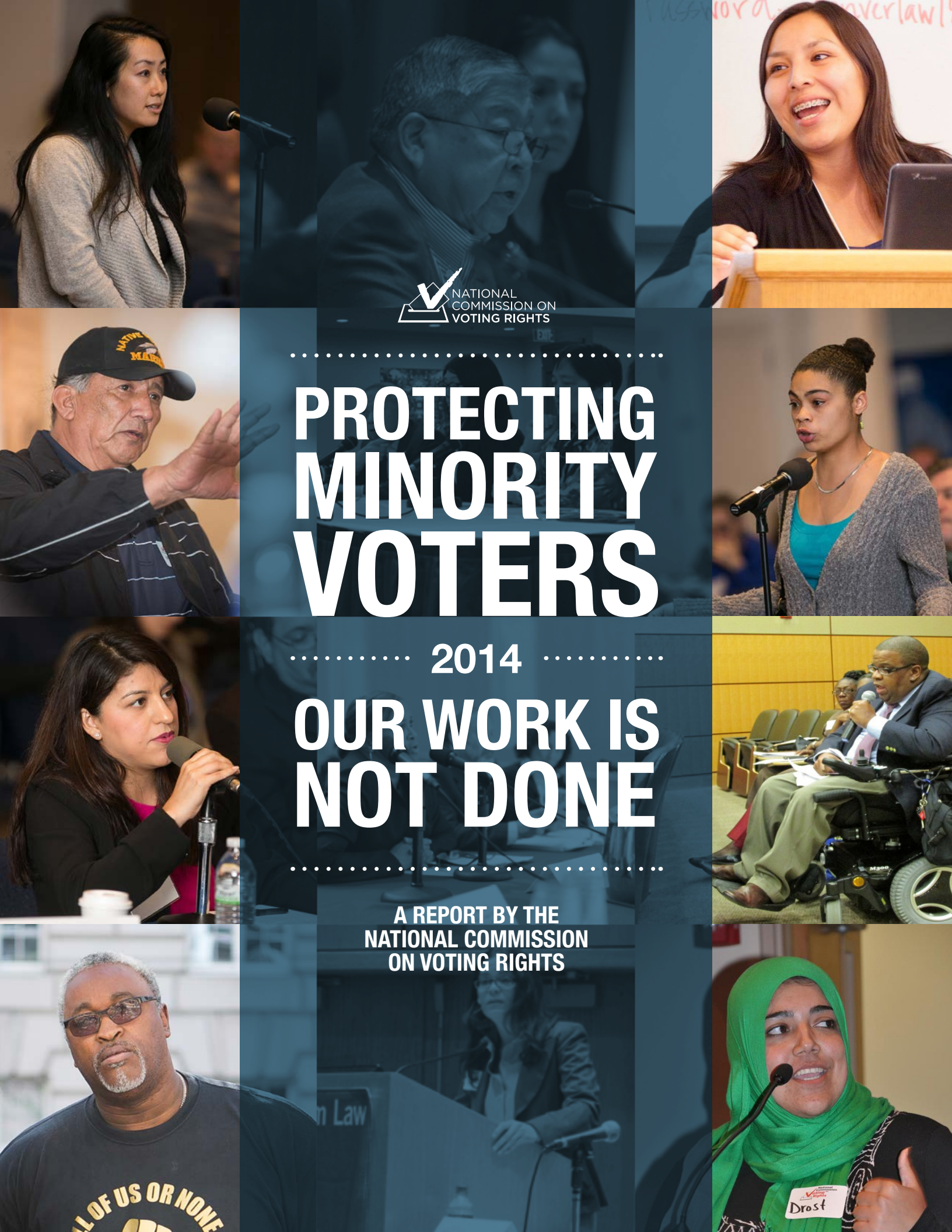

NATIONAL COMMISSION ON VOTING RIGHTS

PROTECTING MINORITY VOTERS

2014

OUR WORK IS NOT DONE

A REPORT BY THE NATIONAL COMMISSION ON VOTING RIGHTS

Disclaimer

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202-662-8600

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PROTECTING MINORITY VOTERS

2014

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Sturm College of Law, University of Denver
The Legal Center for People with Disabilities and Older People.

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American Civil Liberties Union of Florida, University of Miami Student Chapter
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Common Cause
Disability Rights Florida
Florida New Majority
Florida State Conference of the NAACP
LatinoJustice PRLDEF
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National Council of Jewish Women
National Lawyers Guild, University of Miami Student Chapter
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REPORT WRITER:

Tova Wang

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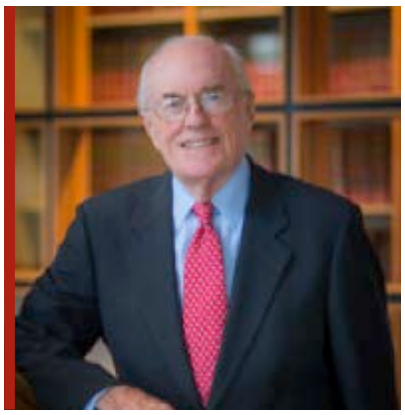
The National Commission on Voting Rights is proud to have the following distinguished leaders serving as National Commissioners: Social justice leader, Dolores Huerta; Law Professor and Director of the Indian Law Clinic at the Sandra Day O' Connor School of Law, ASU, Patty Ferguson-Bohnee; Civil Rights Leader and NAACP Vice Chair, Leon Russell; Youth Engagement Leader, Biko Baker; and former Assistant Attorney General for Civil Rights, John Dunne.

Biko Baker

Executive Director of League of Young Voters and National Leader in Youth Civil Engagement Programs

Rob "Biko" Baker is the Executive Director of the League of Young Voters, and a nationally-recognized youth leader. Based in Milwaukee, Mr. Baker is a pioneer in running city-level, data-driven voter turnout campaigns that dramatically increase the voter participation of young urban citizens. A leading voice on field campaigns targeting young African American voters, Baker serves on CIRCLE's research advisory board and is a board member of the New Organizing Institute. He is also a well known communicator around elections, as well as cultural and political issues including gun violence and voting rights. In addition to being a former contributor to The Source, he has appeared on C-SPAN, Fox News and CNN. A popular and powerful speaker at conferences and events, Mr. Baker has interviewed luminaries Cornel West, Russell Simmons, and Howard Dean, and has been on panels with many of the nation's strongest progressive voices. Baker holds a Ph.D. in History from UCLA.

John Dunne



Former Assistant Attorney General for Civil Rights under President George H. W. Bush

Prior to joining Whiteman Osterman & Hanna as counsel to the Firm, John Dunne had served in a variety of federal, state and local government positions for thirty years. From 1990 to 1993 he was the Assistant Attorney General for Civil Rights at the U.S. Department of Justice. From 1966 to 1989 he was a member of the New York State Senate. Throughout his local and state service, he actively practiced law on Long Island, as a partner in the national law firm of Rivkin, Radler, Dunne & Bayh.

From 1990 until 1993 Dunne, as Assistant Attorney General, headed up the enforcement of all federal civil rights laws. As part of his duties, he argued cases in federal appeals courts and in the U.S. Supreme Court. He was awarded both the Edmund Randolph and the John Marshal awards for distinguished service.

During 24 years as a state senator, Dunne served at various times as Deputy Majority Leader and chair of the judiciary, environmental protection, insurance and prisons committees.

John Dunne has authored a number of articles for various law school journals including Hofstra, Fordham and St. Louis, the op-ed pages of The New York Times, The Washington Post, U.S.A. Today and the New York Law Journal, Business Insurance and New York Bar Journal.

Patty Ferguson-Bohnee

Faculty Director, Indian Legal Program
Director, Indian Legal Clinic
Clinical Professor of Law
Sandra Day O'Connor School of Law,
Arizona State University

Patty Ferguson-Bohnee has substantial experience in Indian law, election law and policy matters, voting rights, and status clarification of tribes. She has testified before the United States Senate Committee on Indian Affairs and the Louisiana State Legislature regarding tribal recognition, and has successfully assisted four Louisiana tribes in obtaining state

recognition. Professor Ferguson-Bohnee has represented tribal clients in administrative, state, federal, and tribal courts, as well as before state and local governing bodies and proposed revisions to the Real Estate Disclosure Reports to include tribal provisions. She has assisted in complex voting rights litigation on behalf of tribes, and she has drafted state legislative and congressional testimony on behalf of tribes with respect to voting rights' issues.

Professor Ferguson-Bohnee clerked for Judge Betty Binns Fletcher of the 9th U.S. Circuit Court of Appeals and was an associate in the Indian Law and Tribal Relations Practice Group at Sacks Tierney P.A. in Phoenix. As a Fulbright Scholar to France, she researched French colonial relations with Louisiana Indians in the 17th and 18th centuries. Professor Ferguson-Bohnee, a member of the Pointe-au-Chien Indian tribe, serves as the Native Vote Election Protection Coordinator for the State of Arizona.

Dolores Huerta

Founder and President of the Dolores Huerta Foundation and Social Justice Activist

As founder and president of the Dolores Huerta Foundation, Dolores Huerta travels across the country engaging in campaigns and influencing legislation that supports equality and defends civil rights. She often speaks to students and organizations about issues of social justice and public policy. The Dolores Huerta Foundation is a not-for-profit community organization that organizes at the grassroots level, engaging and developing natural leaders. The Dolores Huerta Foundation creates leadership opportunities for community organizing, leadership development, civic engagement, and policy advocacy in the following priority areas: health and environment, education and youth development, and economic development.

Ms. Huerta is a life-long labor leader and civil rights activist who co-founded the National Farmworkers Association, which later became the United Farmworkers. She has received numerous awards for her community service and advocacy for workers', immigrants', and women's rights, including the Eugene V. Debs Foundation Outstanding American Award, the United States Presidential Eleanor Roosevelt Award for Human Rights, and the Presidential Medal of Freedom presented to her by President Obama in 2012.

Leon Russell

NAACP Vice Chair of the National Board of Directors

Leon W. Russell retired in January of 2012, after serving as the Director of the Office of Human Rights for Pinellas County Government, Clearwater, Florida. He had held this post since January of 1977. In this position Mr. Russell was responsible for implementing the county's Affirmative Action and Human Rights Ordinances. In September of 2007, Mr. Russell was elected President of the International Association of Official Human Rights Agencies during its annual meeting in Atlanta, Georgia. The IAOHRA Membership is agency based and consists of statutory human and civil rights agencies from throughout the United States and Canada as well as representation from several other nations.

Mr. Russell served as the President of the Florida State Conference of Branches of the NAACP from January 1996 until January 2000, after serving for fifteen years as the First Vice President. He has served as a member of the National Board of Directors of the NAACP since 1990. He has served that board as the assistant secretary and currently serves as Vice Chairman of the National Board. He is a member of the International City Management Association; a member of the National Forum for Black Public Administrators; member of the Board of Directors of the Children's Campaign of Florida; past Board Member of the Pinellas Opportunity Council, past President and Board Member of the National Association of Human Rights Workers; member of the Blueprint Commission on Juvenile Justice with responsibility for recommending reforms to improve the juvenile justice system in the state of Florida.

Mr. Russell also served as the Chairman of Floridians Representing Equity and Equality. FREE was established as a statewide coalition to oppose the Florida Civil Rights Initiative, an anti-Affirmative Action proposal authored by Ward Connerly. Ultimately, the initiative failed to get on the Florida Ballot, because of the strong legal challenge spearheaded by FREE.

Letter from the National Commissioners

We accepted the invitation to serve as National Commissioners on the National Commission on Voting Rights because of our long-standing commitment to the preservation of equal access and rights for all Americans, regardless of race or ethnic background. And we believe that one of the most fundamental of these rights is voting. The National Commission on Voting Rights was convened last year in the aftermath of the Supreme Court's decision to gut a vital protection of the Voting Rights Act, concluding that such protections were no longer needed. Those of us who had been working for years defending voting rights in minority communities strongly disagreed. Soon afterward, the Commission set out with two charges: first, to compile a comprehensive record of voting laws, practices and cases impacting minority voting rights and election administration issues; and second, to issue two reports based on our findings.

With the support of a broad-based coalition of national, state and community- based organizations, the Commission conducted twenty-five state and regional hearings across the country, where we heard from hundreds of voters, grassroots activists, state and local advocates, and experts on the wide range of issues impacting voters today. The Commission also examined state voting laws as well as recent legal cases brought on behalf of minority voters. The amassed record is clear- although we have made significant strides in expanding voting opportunities for all voters, voting discrimination is not a relic of the past but a very real problem that continues to persist in America.

Far too many of our constituencies are kept from the franchise. Far too many localities lack district elections that make it easier for minorities to elect their candidate of choice or disenfranchise incarcerated or formerly incarcerated individuals. Restrictive voter ID laws that make it harder for students and the elderly to vote, demands for proof of citizenship before allowing voters to cast a ballot, and continued instances of scare tactics and intimidation are just some additional examples of the practices that continue to plague of nation.

Protecting Minority Rights: Our Work is not Done, is the first of our national reports. We hope that this report will provide valuable information to voters in communities across the country. We also hope that it will give further evidence for why our nation should continue to provide the necessary protections to all voters—including African American, Latino, Asian American, American Indian and Alaskan Natives—so that we may all cast our ballots as freely as we believe was intended in our democracy.

Signed,

Dolores Huerta, John Dunne, Patty Ferguson Bohnee, Leon Russell, Biko Baker

“The right to vote is precious, almost sacred.”

U.S. Representative John Lewis
Georgia’s 5th Congressional District

EXECUTIVE SUMMARY

There are many reasons to celebrate the 49th anniversary of the Voting Rights Act of 1965 (VRA). We have made enormous progress since the turbulent and momentous years that preceded the enactment of the VRA. The VRA ended the virtual total exclusion of minority voter participation in areas of the country with the worst voting discrimination. It has also removed from use, or blocked implementation, of thousands of discriminatory voting practices. This law and others, as well as social and cultural advances, have resulted in increased minority registration and turnout and the election of thousands of minority elected officials at the federal, state, and local levels, including an African-American President.

But to congratulate ourselves for ending racial voting discrimination would be both premature and unwise. Most minority elected officials come from majority-minority single-member districts in which minority citizens have a fair opportunity to elect candidates of their choice despite lack of support from white voters; minority candidates elected from outside such districts remain the rare exception. Courts are hearing new legal challenges and are continuing to make findings of voting discrimination. A number of states have enacted laws that seem intended only to restrict access to the franchise, especially in ways that impact minority voters more than white. Participation for most minority groups still lags far behind that of white voters (for purposes of this report "white" means "white, non-Hispanic").

Shortcomings in election administration and burdensome voting procedures also remain widespread. The symptoms of these problems took the national stage in the 2000 election, and prompted the enactment of Help America Vote Act and the creation of the U.S. Election Assistance Commission (EAC). But the 2012 election—with embarrassing election administration failures in some jurisdictions, hours-long lines of voters, protracted litigation and the EAC sidelined by partisan infighting—showed that the cure continues to elude us.

Given this landscape, many Americans were shocked and perplexed in June 2013 when the U.S. Supreme Court held, in *Shelby County v. Holder*, that the 2006 reauthorization of key provisions of the Voting Rights Act was unconstitutional. This decision effectively killed Section 5 of the VRA—surely one of the most effective antidiscrimination laws ever enacted. Section 5 provided for federal screening of all new voting practices in nine states and in parts of six others, where there had been a history of discrimination. After going into effect, Section 5 blocked thousands of racially discriminatory voting changes from being implemented, and deterred countless others. It had been reauthorized by a unanimous vote in the Senate and by a virtually unanimous vote in the House in 2006. Why did the Supreme Court do this?

In *Shelby County,* Chief Justice Roberts wrote that "voting discrimination still exists; no one doubts that." However, that important concession was lost in the Court's focus on progress since 1965 in minority participation and election to public office and in the Court's use of a

legal analysis that avoided the extensive record that Congress compiled of voting discrimination in the Section 5 covered jurisdictions between 1982 and 2005.

Whether you agree with the Court or not, the *Shelby County v. Holder* decision demands a nationwide assessment of recent racial voting discrimination. We need to know how much voting discrimination is still occurring, who it is affecting and where it is occurring.

This report—issued by the **National Commission on Voting Rights**—is intended to help answer those questions. We conclude that:

- *Voting discrimination is a frequent and ongoing problem in the United States.* There were 332 successful voting rights lawsuits and denials of Section 5 preclearance from 1995 through 2013 and another ten non-litigation settlements.

- *Some areas of the country have far worse records of voting discrimination than others.* Texas stands out as having a remarkably high level of documented voting discrimination, including multiple state-level violations. Georgia, Louisiana, Mississippi and South Carolina each had far higher levels of problems than average. Overall, the Section 4(b) jurisdictions with approximately 25 percent of the nation's population had more than 70 percent of the successful Section 2 cases.

- *Voting discrimination takes a variety of forms.* Discriminatory redistricting plans and at-large elections continue to prompt the most successful lawsuits. However, there were also 48 successful lawsuits and ten non-litigation settlements relating to language translation and assistance.

- *Voting discrimination has significantly affected African Americans, Latinos, Native Americans, and Asian Americans.* Each of these minority groups suffered extensive official voting discrimination in the past. Since 1995, successful lawsuits have been brought on behalf of each group to remedy voting discrimination and to provide equal electoral opportunities.

- *New problems with voting discrimination are arising even as the old ones persist.* Courts continue to find that at-large election systems and gerrymandered redistricting plans dilute minority voting strength. At the same time, new laws have been enacted, making it more difficult to register and cast a ballot, which is especially problematic for minority citizens.

THE NATIONAL COMMISSION ON VOTING RIGHTS

The Lawyers' Committee for Civil Rights Under Law along with more than a dozen partners organized the nonpartisan National Commission on Voting Rights (NCVR), which conducted 25 regional and state-based hearings between June 2013 and May 2014. The Commission is a successor to the National Commission on the Voting Rights Act, which released an extensive report in 2006 on the record of voting discrimination after 1982.

The NCVR was overseen by a distinguished panel of national commissioners and additional panels of guest commissioners at the state and regional hearings covering 48 states. Testimony and research from Hawaii and Alaska were submitted separately. 494 witnesses testified at the hearings.

The NCVR set out to learn about both racial voting discrimination and election administration issues in its hearings. A report devoted to election administration barriers and reform efforts will be issued at a later date.

This Report, *Protecting Minority Voters: Our Work Is Not Done*, documents the national record of voting discrimination since 1995. The Report examines the nationwide incidence of successful litigation under Section 2 of the VRA, objections under Section 5, and successful language minority litigation, together with testimony, demographic analysis, and in-depth discussions of important issues. The commission testimony was especially helpful in illuminating those areas where litigation is ongoing and highlighting those areas where litigation under current laws has been unable to resolve grave problems.

OVERVIEW OF CHAPTERS

This Report provides a look in the mirror as our country nears the half-century mark after passage of the Voting Rights Act. There is no doubt that the VRA, including the Section 5 preclearance provision, has been extraordinarily effective in combating voting discrimination. Nor is there any doubt that certain state and local jurisdictions continue to enact discriminatory voting laws.

Thus, the loss of federal review of voting changes in certain states makes it essential to closely examine the record of recent voting discrimination. The voting rights of minority citizens are too fundamental, and have been denied too often in the past, to accept the assumption that the Supreme Court merely did away with an unnecessary vestige of a bygone era. Section 5 in fact was targeting the states with the worst records of recent, repeated voting discrimination when it was neutralized by the *Shelby County* decision.

Chapter 1 provides the background on the VRA; a discussion relevant to the debate of whether some of its provisions are still necessary.

The VRA was Congress' response to persistent voting discrimination. Congress acted under its powers to enforce the constitutional protections under the Fourteenth and Fifteenth Amendments for citizens to vote free from racial discrimination. When the VRA was originally enacted, the predominant focus was on eliminating discrimination against African Americans, but beginning in 1975 and based on extensive testimony, Congress added voting protections for language minorities—Latinos, Native Americans, and Asian Americans.

There are two primary forms of discrimination—limitations on ballot access and vote dilution—and the Act addresses both at least in part. The category of limitations on ballot access consists of laws and practices that disproportionately prevent or make it more it difficult for minorities to cast a ballot, such as literacy tests. Minority vote dilution consists of electoral systems—such as a redistricting plan that divides a minority community or the use at-large (jurisdiction-wide) elections—that, combined with white voters voting as a bloc and other factors, prevents a sizable minority community from electing its candidates of choice.

The Act, prior to its major modification in *Shelby County*, consisted of a system of permanent and temporary provisions. Chief among the permanent provisions is Section 2, which enables the federal government and private parties to sue to stop a voting practice or procedure that was enacted or has been maintained with a racially discriminatory intent or result. Section 2 cases are notably complex and resource-intensive.

The primary other types of provisions—minority language, preclearance, and observer provisions—have all been temporary in nature because they place affirmative burdens on jurisdictions where voters need the particular protections. Congress most recently reauthorized these temporary provisions in 2006. Section 203 is the primary minority language provision. Jurisdictions are covered where five percent or (in the case of a political subdivision), ten thousand of their voting age citizens have limited English proficiency and are members of a single language minority group and where the English illiteracy rate of those citizens is greater than the national illiteracy rate. Where a Native American reservation meets this five percent threshold and the illiteracy standard is also satisfied, any jurisdiction containing part or all of that reservation is also covered by Section 203. Covered political subdivision must provide citizens who need it with language assistance in all stages of the electoral process.

Section 5 preclearance required covered jurisdictions to demonstrate to the Department of Justice (DOJ) or a federal district court in Washington D.C. that a proposed change in voting did not have a discriminatory purpose or effect before the jurisdiction could implement the change. The observer provision under Section 8 enabled the U.S. Attorney General to send

federal observers to monitor polling places and the vote-counting process in a covered jurisdiction when DOJ believed it was necessary to prevent discrimination. The determination of which jurisdictions were subject to Section 5 and Section 8 was based on the formula contained in Section 4(b) of the Act. The formula—which was based on a jurisdiction's low voter participation in the 1964, 1968, or 1972 Presidential elections and the use of a discriminatory test or device in the same election—had not changed since 1975 because Congress had found in subsequent reauthorizations in 1982 and 2006 that these jurisdictions continued to have significant records of discrimination. The covered states under the Section 4(b) formula were primarily in the South and Southwest, as well as Alaska.

In the challenge before the Supreme Court, Shelby County argued that Congress acted beyond its constitutional powers when it reauthorized Section 5 and did not update the formula determining which states and jurisdictions were subject to Section 5. The Supreme Court ruled that the existing formula was unconstitutional. Without a formula, Section 5 cannot be used. Unless and until Congress acts in response to *Shelby County*, Section 5 is essentially dead.

Chapter 2 presents a national analysis from 1995 to the present of successful enforcement of the Voting Rights Act (Section 2 litigation, Section 5 litigation and preclearance denials, and litigation against English-only elections.)

The findings include:

- Racial voting discrimination remains an ongoing problem, with about 332 successful Voting Rights Act lawsuits or denials of Section 5 preclearance since 1995.

- This includes at least 171 successful Section 2 lawsuits (not including minority language cases), 113 Section 5 preclearance denials, and 48 successful lawsuits raising language assistance claims. There were also ten pre-litigation settlements regarding minority language cases.

- The voting discrimination documented in Section 2 lawsuits is not evenly dispersed around the country. It is geographically concentrated, most heavily in Texas, but also in Florida, Georgia, Louisiana, Mississippi, and South Dakota. Each of these states was fully or partially covered under Section 4(b) of the VRA when the Supreme Court decided in *Shelby County v. Holder* that Section 4(b) was too outdated to target present-day discrimination.

- Louisiana led the way in Section 5 preclearance denials with Texas, South Carolina, Mississippi, and Georgia not far behind. These numbers, combined with the Section 2 data,

made these five states are the worst performers when it comes to discrimination cases outside of those involving language assistance.

- New York, Texas, and California were the states with the most successful minority language assistance cases or pre-litigation settlements. Each had at least ten.

Chapter 3 describes what has been lost as a result of the *Shelby County* decision.

First, Section 5 prevented discriminatory voting changes from being put into use before they underwent federal review. More than 3,000 voting changes in over 1,000 separate objection letters and court judgments were denied Section 5 preclearance between 1965 and 2013.

Second, Section 5 deterred the enactment of discriminatory laws. For example, it was not until after the *Sheby County* decision that the North Carolina legislature amended a photo ID bill to add numerous other voting restrictions; that law is the subject of three pending federal lawsuits.

Third, the Section 5 process promoted transparency because DOJ and minority citizens or organizations (after DOJ contacted them) would know about voting changes before they would be implemented.

Fourth, jurisdictions are now implementing voting changes that had been blocked by DOJ or federal courts under Section 5.

Fifth, Section 2 is not an adequate substitute for Section 5 for several reasons. Under Section 5 the review of a voting change occurred before the change was implemented, whereas under Section 2, the change gets implemented and is in effect while litigation is ongoing unless and until a court stops it—and this takes years except in the simplest cases. In addition, under Section 2, the minority plaintiffs or DOJ have the burden of proof; under Section 5, the jurisdiction had the burden of proof. Moreover, Section 2 cases tend to be complex, time-consuming, and expensive as compared to the 60-day administrative review process under Section 5.

Sixth, DOJ appears to have interpreted *Shelby County* to also prevent it from sending observers to the jurisdictions covered previously for federal review.

Chapter 4 discusses the different historical contexts and geographic areas in which African Americans, Latinos, Native Americans, and Asian Americans have been affected by voting discrimination.

African-American Citizens

African Americans were subjected to pervasive and longstanding voting discrimination preventing them from voting until Congress passed the VRA in 1965. After the passage of the VRA, there have been repeated efforts to undo gains in minority voter registration and turnout, particularly in the form of election methods that systematically diluted and negated African American voting strength.

Today African Americans comprise approximately 14 percent of the United States' population with 55 percent of the country's African-American population living in the South. This has particular meaning in light of the *Shelby County* decision. National registration and turnout rates for whites and African Americans have been similar in the last two presidential elections (when an African-American candidate was running for President from a major party for the first time) but African-American participation remains lower for midterm elections. Though there are a significant number of African-American elected officials, this is largely a function of the number of majority-minority districts that exist because of both VRA protections and residential segregation.

African Americans are particularly hard-hit by the *Shelby County* decision. The overwhelming majority of voting changes stopped by Section 5 between 1995 and 2014 (101 of 113, or approximately 90 percent) involved a discriminatory purpose or effect with respect to African-American voters.

In addition, African-American plaintiffs and DOJ on behalf of African Americans brought approximately 36 percent of the successful Section 2 cases nationwide between 1995 and 2014, and more than 60 percent of those cases were brought in the jurisdictions formerly covered by Section 5.

Latino Citizens

Latinos have faced a long history of electoral exclusion and discrimination in the United States that included the use of literacy tests, intimidation, and English-only elections. When the VRA was amended in 1975 and 1982, Congress recognized not only that English-only elections led to pervasive discrimination against Latino citizens, but also that many of the methods being used to dilute the voting strength of African-American citizens were also being used against Latino citizens.

Latinos have grown to be the largest minority group in the United States (17 percent) and though about three quarters of the Latino population resides in eight states, the population lives throughout the country so that 23 states have at least one jurisdiction that is covered for Spanish-language voting assistance under Section 203 of the VRA.

Voter participation rates for Latino citizens lag behind the participation rates for white citizens. For example, in the 2012 presidential election among voting age citizens, white registration was 14 percentage points higher than Latino registration, and the turnout disparity was 18 percentage points. The number of Latino elected officials has increased markedly in recent years but this success is closely tied to majority-minority election districts and the opportunities that they provide for Latinos to elect the candidates of their choice.

Approximately 56 percent of the successful Section 2 cases (96 of 172) brought between 1995 and 2014 involved Latino plaintiffs or were brought by DOJ on behalf of Latino citizens; most of these involved the use of at-large election systems or racially gerrymandered election districts. Between 1995 and 2013, 29 of the Section 5 preclearance denials involved voting changes that had a discriminatory purpose or effect with respect to Latino voters.

Compliance with the language assistance provisions of the VRA is critically important for Latino citizens to fully engage in the electoral process, but noncompliance is widespread. Of the 58 successful language assistance cases or pre-litigation settlements between 1995 and 2014, 46 (79 percent) involved claims on behalf of Latinos.

Native American citizens (American Indians and Alaska Natives)

Native Americans have been subjected to blatant discrimination for centuries that, among other things, affected their right to vote. They were granted citizenship in 1924 but it was not until their designation by Congress as a language minority group subject to protection under the VRA in 1975 that many Native American citizens were able to exercise their right to vote.

Native Americans comprise less than one percent of the total U.S. population, but because they are concentrated primarily in portions of Oklahoma, Arizona, New Mexico, North and South Dakota, Montana, and Alaska, Native Americans in certain counties comprise a significant portion—if not a majority—of the population. Voter turnout by Native American voting age citizens continues to lag far behind that of white voting age citizens (an estimated 17-18 percentage point disparity in the November 2012 election). There are only 64 Native American state legislators across the entire country and 2 federal legislators.

Between 1995 and 2014 there were at least 18 successful challenges to discriminatory voting practices brought on behalf of Native American citizens under Section 2 of the VRA (not including bilingual assistance claims). Most of these involved vote dilution challenges to at-large election systems. There were five successful language assistance lawsuits and

pre-litigation settlements. Because relatively few jurisdictions with concentrated Native American populations were covered under Section 5, there was only one Section 5 objection regarding discrimination against Native Americans, as well as one objection involving a jurisdiction covered under Section 3(c).

Asian American Citizens

Asian Americans historically were denied U.S. citizenship under discriminatory immigration laws, leaving them unable to vote, and both Asian immigrants and native-born Asian Americans have been targeted by other discriminatory laws and practices. A 1965 change to the immigration laws led to a dramatic increase in Asian immigration. In 1975 Congress recognized the history of exclusion and voting discrimination against Asian American citizens in the form of English-only elections when it reauthorized and amended the VRA to include new language minority provisions, and specified Asian Americans as a language minority group.

Asian Americans comprise approximately five percent of the total population of the United States. The Asian American population grew by 46 percent between 2000 and 2010, and much of that increase was due to immigration. Asian American voting age citizens participate in elections at rates significantly lower than white voting age citizens; in the 2012 election, there was a 17 percentage point disparity in registration and a 19 percentage point disparity in turnout. Studies have found that at least some part of those disparities is due to language accessibility issues and other forms of voting discrimination. The Asian American population resides primarily in heavily populated urban areas and so there are relatively few electoral districts with Asian American voting majorities. There are currently 11 Asian American members of Congress, 98 Asian American members of state legislatures, and two Asian American governors.

Asian American citizens benefit greatly from bilingual election assistance in areas covered by the language minority provisions of the VRA. From 1995 to 2014, ten successful language assistance lawsuits and non-litigation settlements involved Asian languages. Because the jurisdictions covered under Section 4(b) of the VRA at the time of the *Shelby County* decision had relatively low concentrations of Asian American citizens, only three preclearance denials between 1995 and 2013 have involved the effect of the proposed voting changes on Asian American citizens. In large part because of the dearth of jurisdictions where Asian Americans are large enough to comprise a majority in a single-member district, there were no successful vote dilution cases brought on behalf of Asians.

Chapter 5 discusses the problem of minority vote dilution since 1995.

Minority vote dilution involves electoral systems that devalue, negate or diminish the voting strength of racial minority groups by unnecessarily putting them in majority-white jurisdictions

where they usually cannot elect their preferred candidates because most voters vote along racial lines. The two principal forms of minority vote dilution are the use of at-large elections and racially gerrymandered election districts. The majority of successful Section 2 cases between 1995 and 2014 were minority vote dilution claims, and the majority of Section 5 objections since 1995 were based upon minority vote dilution.

Racially Polarized Voting

The presence of racially polarized voting is a necessary element of minority vote dilution claims. Racially polarized voting is defined as "a pattern of voting along racial lines where voters of the same race support the same candidate who is different from the candidate supported by voters of a different race." Racially polarized voting is not assumed to exist; its presence must be proven as a matter of fact. Racially polarized voting typically is proven by a statistical analysis that estimates group voting preferences based upon precinct-level vote totals and demographic data.

Racially polarized voting continues to be widespread. Since 1995 federal courts made findings of racially polarized voting in challenges to statewide redistricting plans in Colorado, Massachusetts, Montana, South Carolina, South Dakota, Tennessee, Texas, and Wisconsin. Experts retained for purposes of statewide redistricting also reported racially polarized voting patterns in Alaska, Arizona, California and Kansas. DOJ noted racially polarized voting as a factor in denying Section 5 preclearance to statewide redistricting plans in Arizona, Florida, Louisiana, South Carolina, and Texas. More generally, any judicial finding of a Section 2 vote dilution violation, and any Section 5 preclearance denial based upon vote dilution, reflects a determination that racially polarized voting is present.

Studies have shown more severe racially polarized voting in the states that were covered under Section 4(b) of the VRA. For example, a Supreme Court brief submitted by prominent academic experts in the *Northwest Austin v. Holder* lawsuit showed that, according to exit polls taken during the 2008 Presidential election, Barack Obama was supported by 26 percent of white voters in the states covered by Section 4(b) versus 48 percent in the non-covered states. The six states with the lowest rates of white support for Obama were all fully covered under Section 4(b): Alabama, Mississippi, Louisiana, Georgia, South Carolina, and Texas.

Racially Discriminatory Methods of Election

Over 70 percent of successful cases brought under Section 2 between 1995 and 2014 raised claims against methods of election. These cases were brought in 21 states, of which 18 had between one and four cases; Texas had 78 cases, Mississippi had seven and Georgia had six.

Changes to methods of election accounted for 19 Section 5 preclearance denials in nine different states between 1995 and 2013. These included one state-level objection in Mississippi, with a total of five in Texas and four in South Carolina.

Racially Discriminatory Redistricting Plans

Racially discriminatory redistricting plans accounted for the second principal category of successful Section 2 vote dilution cases and Section 5 preclearance denials. Redistricting plans that dilute minority voting strength typically submerge minority voters in overpopulated districts, divide minority population concentrations to prevent them from comprising the majority of a fairly-drawn district ("fragmentation" or "cracking"), or unnecessarily overconcentrate them in a minimal number of districts ("packing").

Redistricting changes accounted for more than half (58 of 113) of the Section 5 preclearance denials between 1995 and 2013. These included denials of statewide redistricting plans in Arizona, Florida, Louisiana, South Carolina, and Texas (four statewide preclearance denials).

Between 1995 and 2013, there were successful Section 2 challenges to 30 redistricting plans, including statewide plans in Colorado, Massachusetts, Rhode Island, South Dakota, Tennessee, Texas, and Wisconsin.

Chapter 6 discusses a variety of state laws and practices that can restrict or interfere with access to the ballot for minority citizens to a greater extent than white voters.

Far too many states and jurisdictions have enacted laws or adopted practices that have created unnecessary barriers to the ballot. These include restrictions on community voter registration drives, proof-of-citizenship requirements, the failure to provide voter registration at public assistance agencies, felony disenfranchisement laws, dual voter registration systems, flawed voter purging, voter identification requirements, cutbacks on early in-person voting, problems with access to polling places, special barriers affecting Native Americans, and voter intimidation. These problems were the subject of extensive testimony at NCVR hearings, and some of them are the subject of heated public debate and current litigation.

Community Voter Registration Drives

Community-based registration drives are effective and especially benefit minority citizens. According to 2010 Census Bureau data, African Americans (7.2 percent) and Latinos (8.9 percent) report having registered to vote at voter registration drives at significantly higher rates than white voters (4.4 percent). Therefore, restrictions on voter registration drives raise serious concerns about limiting minority voter participation. There have been repeated efforts in Florida to restrict community voter registration drives. Florida historically did not permit voter registration drives before passage of the NVRA and has attempted to limit their

availability on repeated occasions despite the National Voter Registration Act of 1993 (NVRA). Two recent federal court judgments based on non-racial theories found that the State was imposing unconstitutional restrictions on voter registration drives.

Proof of Citizenship

Several states in recent years have adopted voter registration procedures that require providing documentary proof of U.S. citizenship in order to register to vote or in response to voter challenges brought by election officials. For example, the State of Georgia in 2008 attempted to use administrative record-matching between driver's license data and voter registration files to purge registered voters, unless the voters provided proof of U.S. citizenship to election officials. After a three-judge court issued a preliminary injunction against Georgia, which required the State to submit its procedure for administrative preclearance under Section 5 of the VRA, DOJ denied preclearance to the program, noting its unreliability and impact on minority voters. After filing a Section 5 declaratory judgment action seeking judicial preclearance, Georgia modified its procedure, which DOJ administratively precleared.

Proof of citizenship for voter registration has been a highly contentious issue. Arizona and Kansas have put these requirements into effect, while Alabama and Georgia have enacted these requirements but not yet implemented them. In 2013 the U.S. Supreme Court held in *Arizona v. ITCA* that Arizona must accept and use "federal forms" for voter registration under the NVRA, even if the applicants do not provide the proof of citizenship required by Arizona state law. The federal form establishes proof of U.S. citizenship via an attestation under oath, as do the vast majority of state forms. After the *Arizona v. ITCA* decision, Kansas and Arizona filed a lawsuit in Kansas seeking to compel the U.S. Election Assistance Commission to modify the federal form instructions for those states. This case remains in litigation.

Voter Registration at Public Assistance Agencies

Section 7 of the NVRA requires public assistance agencies to offer voter registration in conjunction with applications for benefits, renewals of benefits, and changes of address. Because minorities are a relatively larger share of the client population for the two largest public assistance programs, the failure to provide voter registration opportunities during covered agency transactions has a disproportionately negative impact on minority citizens. Since 2006, a concerted effort by voting rights organizations to remedy widespread noncompliance with Section 7 has involved extensive outreach to state officials and a series of successful lawsuits. This has resulted in the submission of more than two million voter registration applications above the preexisting levels.

Felony Disenfranchisement

Nearly 6 million Americans are banned from voting because, at some point, they were convicted of a felony offense. These laws affect minority citizens at a substantially higher rates than white citizens overall. In three states (Florida, Kentucky, and Virginia) at least one in five

African-American adults is disenfranchised. This is a major issue without a litigation solution because federal courts will only accept a challenge to a felony disenfranchisement law if the plaintiffs can prove that the law was enacted with a racially discriminatory purpose. Federal courts have uniformly rejected challenges to felony disenfranchisement laws based upon other constitutional theories or the Section 2 results test.

Voter Identification

The increased enactment by states of laws requiring registered voters to provide government-issued photo identification (ID) before their votes are counted may be the most contentious voting-related issue of the last decade. Several of these laws have been subject to legal challenge. Georgia and Indiana passed the first two of these laws in 2005, and the ensuing federal legal challenges have provided proponents and opponents of these laws with a number of lessons, including the following:

- A state with a photo ID requirement must provide an effective method for citizens to obtain a free ID. The first Georgia law did not and was found to be an unconstitutional poll tax. Georgia revised its law to enable a registered voter to obtain a free qualifying ID at the county registrar's office. The second law was upheld against a challenge that included a variety of legal theories.

- After the Supreme Court upheld Indiana's law against a right-to-vote challenge, certain state legislators and proponents interpreted the decision as providing legal immunity to any kind of voter identification law.

- Conversely, opponents of the photo ID laws who are bringing legal challenges read the Indiana decision as requiring them to show more definitively the number of people negatively affected by the law, demonstrate implementation problems, and provide compelling testimony from individuals burdened by the law.

The end result has been that new restrictive laws have passed and there have been additional legal challenges. The more recent cases, such as the federal cases involving laws in Wisconsin, South Carolina, and Texas and the state case involving the Pennsylvania law, have shown the following trends, though it is important to note that the jurisprudence is still evolving.

- There is now a wealth of statistical data allowing opponents of the laws to show the real impact of these laws on voters, and in the cases in Wisconsin, South Carolina, and Texas, the disproportionate impact on minority voters. The cases have also provided compelling testimony from witnesses and other evidence demonstrating implementation issues that affected voters. This was particularly true in Pennsylvania.

- The courts in Wisconsin and Pennsylvania were skeptical about the stated rationale for these laws because of a dearth of proof that the primary rationale—the prevention of voter fraud—is advanced by the law.

- Courts have been hesitant to accept a law that does not enable any, or virtually any, voter to easily obtain a free ID or provide another alternative, such as signing an affidavit at the polling place, for any voter to vote without an ID.

Early In-Person Voting

Early in-person voting has proven to be increasingly popular over the last several years, as currently 33 states and the District of Columbia provide for some form of early voting. African Americans in particular favor early in-person voting; a 2008 statistical analysis of election data in Cuyahoga County in 2008 showed that African Americans voted early at a rate of 26 to 1 as compared to whites and studies from other jurisdictions, while not showing that degree of disparity, consistently show that African Americans employ early voting much more often. In spite, or perhaps because, of the popularity of early voting amongst African Americans, states such as Florida, North Carolina, Ohio, and Wisconsin have recently scaled back the availability of early voting.

Problems at Polling Places

There have been several instances where the closing or consolidation of polling places has been blocked by a court or DOJ because of concerns about its discriminatory impact on minority voters, including in Benson County, North Dakota; Bexar County, Texas; Monterey County, California; and Alaska. In addition, the refusal of certain officials in jurisdictions containing Native American reservations to provide satellite registration offices or voting sites on reservations has only been overcome where litigation was filed or threatened.

Voter Intimidation and Voter Challenges

DOJ has been reluctant to bring voter intimidation cases because, according to DOJ's Federal Prosecution of Election Offenses manual, intimidation is "subjective" and often there is not concrete evidence or witnesses. DOJ's previous means of preventing voter intimidation was through the use of federal observers. It remains to be seen whether DOJ's decision to terminate its observer coverage in the formerly covered jurisdictions after the *Shelby County* decision will result in a substantial increase in voter intimidation.

Voter intimidation-type tactics may be employed by election officials or by private parties. A particularly egregious recent example from the 2012 election was the placement of billboards in predominantly minority communities in Ohio and Wisconsin "notifying" voters that voter fraud was a felony subject to prison terms or fines. Only after significant pressure and media attention did Clear Channel, the owner of the billboards, take them down because its client

would not divulge its identity. Concerns about voter challenges and voter deception and challenges before the November 2012 election led the North Carolina State Board of Elections to issue a directive to the county boards of elections on how to deal with these issues.

Chapter 7 reviews the record of violations and enforcement of the language minority provisions of the VRA.

As discussed above, Section 203, the chief language assistance provision, was enacted in 1975 to address the exclusionary and discriminatory effect of English-only elections on Latino, Native American, and Asian voting age citizens with limited English proficiency in jurisdictions where they comprise more than five percent of the citizen voting age population or number more than 10,000 people. Other provisions specifically address the right of Puerto Rican voters to vote free from discrimination based on their limited English proficiency and the right of a voter who cannot read the ballot to have an assistor of his or her choice. In addition, minority language cases have occasionally been brought under the general Section 2 non-discrimination provision.

Voter participation has improved for all three sets of language minorities in recent years but continues to lag significantly behind whites, making non-compliance with these provisions a particular reason for concern. From 1995 to 2014, there have been 48 successful cases and ten non-litigation settlements involving the minority language protections. These cases demonstrate several trends, including the long-standing refusal of certain jurisdictions to provide assistance prior to litigation, that effective language assistance leads to electoral success for the language minority group, and the interconnection between the lack of minority language assistance and racial hostility.

Chapter 8 includes some brief concluding thoughts. This is followed by an Appendix that contains maps and details with some of the key metrics discussed in the report.

In addition to this report, the NCVR's website,votingrightstoday.org, includes additional information, including state-level analyses and photos, quotes, and pictures from the 25 Commission hearings.

The foregoing briefly summarizes the NCVR's first report. This report and its Appendices provide detailed discussions of the preceding summary.

CHAPTER 1
Background: The Voting Rights Act of 1965

This Report's assessment of recent voting discrimination in the United States begins with an overview of the Voting Rights Act of 1965 (VRA), including the statute's origins, provisions, and impact on minority electoral opportunity up until the time period examined in this report (the years 1995 to the present). This chapter also provides an overview of the Supreme Court's momentous decision in *Shelby County v. Holder*[1] in June 2013, and that decision's negation of the VRA's preclearance requirement and possibly other VRA requirements as well.

As Chief Justice Warren observed in his seminal opinion in *South Carolina v. Katzenbach* upholding the VRA's constitutionality a few months after it was enacted,

> **[t]he Voting Rights Act of 1965 reflects Congress' firm intention to rid the country of racial discrimination in voting. The heart of the Act is a complex scheme of stringent remedies aimed at areas where voting discrimination has been most flagrant… [Other] remedial portions of the Act are aimed at voting discrimination in any area of the country where it may occur.**[1a]

For over three decades, Congress, the Executive Branch, and the federal courts joined together in a historic effort to vigorously enforce the VRA and give life to the 15th Amendment's guarantee that the right to vote shall not be denied or abridged on account of race or color. This consensus began to erode, however, in the time period under review in this Report. Then, in *Shelby County*, the Supreme Court essentially stopped the use of the Section 5 preclearance requirement (and also perhaps the federal observer program) by ruling unconstitutional the VRA provisions which identified the parts of the country where Section 5 (and the observer program) applied. Other VRA remedies remain in effect and continue to be enforced.

I. THE PRELUDE TO THE 1965 ACT: ALMOST A CENTURY OF AFRICAN-AMERICAN DISENFRANCHISEMENT

The VRA was enacted against the backdrop of this country's shameful and almost century-long disenfranchisement of millions of its African-American citizens. That history of pervasive discrimination was not the inevitable result of the social and economic conditions that

PHOTO CREDIT: JAMES KARALES. COPYRIGHT: ESTATE OF JAMES KARALES, 1965

preceded the Civil War and the end of slavery but, instead, represented a substantial backsliding from the initial progress in voting rights that followed after the Civil War.

In 1868 and 1870, the country ratified the 14th and 15th Amendments to the Constitution guaranteeing to all citizens equal protection of the law, and prohibiting any denial or abridgement of the right to vote on account of race or color. Both Amendments included enforcement clauses giving Congress specific power to implement these guarantees through appropriate legislation. While the Amendments did not promise voting rights for all citizens—women were not enfranchised until the ratification of the 19th Amendment in 1920, and the status of Native Americans living on reservations was not addressed—the 14th and 15th Amendments appeared to herald the end of racial discrimination in voting.

Indeed, during the Reconstruction era former slaves registered, voted, and were elected to political office in significant numbers. These gains in black political empowerment were the direct result of the federal government's enforcement of the 14th and 15th Amendments through legislation and the presence of federal troops in the former Confederate States. But in 1876 the Supreme Court narrowly interpreted these Amendments to invalidate congressional civil rights legislation,[2] and that was immediately followed by the Hayes-Tilden Compromise of 1877, which ended Reconstruction. This ushered in a long era during which all three branches of the federal government took a "hands-off" approach to racial discrimination generally and racial discrimination in voting in particular. By 1900, nearly all of the Reconstruction-era gains in voting rights had been reversed, and the resulting Jim Crow era persisted until the second half of the 20th Century. The concerted to effectively nullify the 15th Amendment was carried out in a variety of ways, including racially-inspired and racially-enforced restrictions on voter registration and voting, election methods that sought to dilute any residual voting power of African Americans, and fraud and violence directed against African-American voters.[3]

After World War II, the Jim Crow regime began to crumble in the face of civil rights protests, a Supreme Court and lower federal courts that rejected racial discrimination, tentative action by the federal Executive Branch, and a national consciousness that at least raised questions about Jim Crow.[4] Congress enacted its first voting rights laws since the 19th Century in 1957, 1960, and 1964, and lawsuits were filed against numerous voting registrars in the South by the newly created Civil Rights Division of the U.S. Department of Justice (DOJ).[5] Still, these efforts were only able to dent the structure of oppression. As of March 1965, less than one-third of all African Americans living in Alabama, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, and Virginia were registered to vote, whereas about three-fourths of the white population of those States was registered.[6]

Marchers walk toward the Edmund Pettus Bridge during the Selma to Montgomery March for Voting Rights of 1965.

Finally, after the 1964 Freedom Summer in Mississippi saw both valiant efforts to register African Americans to vote and retaliatory violence including the murders of three civil rights workers, and after the brutal March 7, 1965 attack on protesters peacefully marching across the Edmund Pettus Bridge in Selma, Alabama, President Johnson stood before Congress on March 15, 1965 to urge the adoption of a new voting rights bill. Johnson declared that "There is no issue of States rights or national rights. There is only the struggle for human rights," and "we shall overcome."[7] Congress responded, and less than five months later, President Johnson signed the Voting Rights Act of 1965 into law on August 6.[8]

II. THE 1965 VOTING RIGHTS ACT

The VRA's first order of business was to knock down the registration laws and stop the actions by local registrars that were preventing African Americans from registering and voting. The VRA sought to do this in several ways. First, Section 4 of the Act laid out a formula for identifying areas where voting discrimination was most prevalent and temporarily prohibited the use of voting "tests or devices" in those areas.[9] These "tests or devices" included any requirement that voters "(1) demonstrate the ability to read, write, understand, or interpret any matter; (2) demonstrate any educational achievement or his knowledge of any particular subject; (3) possess good moral character; or (4) prove his qualifications by the voucher of

registered voters or members of any other class."[10] Second, Section 6 of the Act gave the U.S. Attorney General the authority to bypass local election officials by dispatching federal registrars (known as "examiners") to register qualified voters in these same areas designated by Section 4.[11] Third, Section 8 gave the Attorney General the authority to send federal observers into polling places in the Section 4 areas to monitor and document the conduct of elections and to deter misconduct by election officials and intimidation by private citizens.[12]

Congress understood, however, that once minority voters became able to vote, the risk was substantial that states and localities where discrimination had been most prevalent would enact or seek to administer new techniques for minimizing or canceling out minority electoral participation. Thus, Congress included Section 5 in the VRA. Section 5 requires that all new voting practices and procedures in areas identified by Section 4 undergo federal review before implementation. This review—called "preclearance"—was designed to ensure that new practices and procedures did not have the purpose and would not have the effect of denying or abridging the right to vote on account of race or color.[13]

The VRA also included, in Section 2, a nationwide general prohibition on voting discrimination.[14] In Section 4(e), Congress took a first step toward addressing potential discrimination in English-only elections, establishing a remedy for Puerto Rican citizens educated in schools where the predominant language was not English.[15] And in Section 11, Congress prohibited voter intimidation.[16]

The constitutionality of the VRA was immediately challenged by several of the states covered by Section 4 and thus subject to the Act's special remedies regarding voter registration, election monitoring, and preclearance. Their lawsuit was filed directly in the Supreme Court, and on March 7, 1966, exactly one year after the events of Bloody Sunday on the Edmund Pettus Bridge, the Court decisively upheld all the challenged provisions in *South Carolina v. Katzenbach*.[17] Discussing the VRA's specially targeted provisions, the Court captured the essence of the new legal framework Congress had established for addressing racial discrimination in voting:

> **Congress… found that case-by-case litigation was inadequate to combat widespread and persistent discrimination in voting, because of the inordinate amount of time and energy required to overcome the obstructionist tactics invariably encountered in these lawsuits. After enduring nearly a century of systematic resistance to the Fifteenth Amendment, Congress might well decide to shift the advantage of time and inertia from the perpetrators of the evil to its victims.[18]**

III. REAUTHORIZATION AND EXPANSION OF THE VRA'S REMEDIES AFTER 1965

Part of Congress' original structuring of the targeted "test or device," preclearance, examiner, and observer remedies was the inclusion of a sunset provision which would have effectively terminated these remedies in 1970 by allowing the Section 4 coverage to expire.[19] In that year, however, Congress reauthorized Section 4 coverage for another five years, and then reauthorized coverage for an additional seven years in 1975, 25 years in 1982, and 25 years again in 2006 (terminated then in 2013 by the *Shelby County* decision).[20]

The congressional debates in 1970, 1975, 1982, and 2006 over reauthorizing the Section 4 coverage formula focused mostly on whether to continue requiring Section 5 preclearance for voting changes. This is because the other most significant remedy applied to the Section 4 areas – the prohibition on voting "tests or devices" – was expanded by Congress into a nationwide five-year suspension in 1970[21] and a permanent, nationwide ban in 1975.[22]

As part of the debate over each post-1965 reauthorization of Section 4 coverage and thus Section 5, Congress examined the recent record of voting discrimination in the covered areas to assess whether there was a current need for the preclearance requirement. As a result of each review, Congress found that there was a significant and ongoing pattern of voting discrimination in these areas, and that, accordingly, there continued to be a significant risk that the electoral gains that had been achieved in these areas would be rolled back without federal oversight.[23]

In 1975, Congress also received extensive information indicating that in certain parts of the country, the use of English-only elections was having a substantial and discriminatory impact on language minority citizens – Hispanic Americans, Asian Americans, American Indians, and Alaska Natives.[24] Congress also received information indicating that in a subset of these areas, the impact of English-only elections and other discriminatory practices was comparable to the voting "tests or devices" that had prevented African Americans from effectively participating in the electoral process.[25] Accordingly, as part of the 1975 reauthorization legislation, Congress extended Section 4 coverage – and thus the Section 5 preclearance requirement – to particular states and localities that were conducting English-only elections. Congress also prohibited English-only elections in these newly-designated Section 4 areas for as long as Section 4 coverage continued.[26] In addition, the 1975 legislation added Section 203 to the VRA, which requires bilingual election assistance in other areas around the country. These areas are identified by a separate coverage formula laid out in Section 203.[27] Finally, the 1975 legislation amended Section 2 and Section 5 of the VRA to include a prohibition on discrimination against language minority citizens.[28]

The 1982 reauthorization legislation also included an expansion of the VRA, in the form of an amendment to Section 2 adding a results test to that section's general prohibition on racial and language minority discrimination in voting. The amendment was adopted to respond to a 1980 Supreme Court decision, *Mobile v. Bolden*, in which the Court made it significantly more difficult for minority plaintiffs to successfully challenge at-large and multi-member election plans under the 14th Amendment.[29] Congress based the new results test on the standard that courts had relied upon prior to *Mobile* for resolving claims against at-large and multi-member elections.[30]

After the Supreme Court's initial decision in March 1966 upholding the constitutionality of the VRA, the Supreme Court continued to reject constitutional challenges to the Act. Later in 1966, the Court upheld the constitutionality of the bilingual provisions of Section 4(e),[31] and following the 1970 reauthorization, the Court summarily rejected a renewed challenge to Section 5.[32] Following the 1975 reauthorization, the Supreme Court issued a third decision in favor of Section 5 in 1980, rejecting claims that Section 5 violated principles of federalism, that Congress lacked the authority to reauthorize Section 5, and that Congress could not include in Section 5 a prohibition on voting changes that have a discriminatory effect.[33] The Supreme Court's last decision upholding the constitutionality of Section 5 was in 1999, following the 1982 reauthorization. In that case, the Court again rejected the assertion that Section 5 violated federalism principles.[34]

Most recently, in 2005 and 2006, Congress conducted a series of 20 hearings and heard testimony from 90 witnesses in deciding whether to reauthorize Sections 5 and 203.[35] The evidence received included the 2006 Report of the National Commission on the Voting Rights Act, which summarized and detailed numerous findings of voting discrimination within the jurisdictions covered by Section 4 between 1982 and 2005.[36] By margins of 390-33 in the House of Representatives and 98-0 in the Senate, Congress voted to extend Section 4 coverage, and thus Section 5, for an additional 25 years, and to extend Section 203 for an additional 25 years as well. President George W. Bush signed the 2006 reauthorization into law on July 27, 2006.[37]

As in 1982, the 2006 legislation included amendments to respond to recent Supreme Court decisions that Congress believed had undermined voting rights enforcement. Those decisions, in 2000 in *Reno v. Bossier Parish School Board*[38] and in 2003 in *Georgia v. Ashcroft*,[39] had significantly restricted the scope of Section 5's prohibition on voting changes with either a discriminatory purpose or a discriminatory effect.[40]

The 1970, 1975, and 1982 reauthorizations also extended the application of the federal examiner and observer provisions in areas covered by Section 4. In 2006, Congress again extended the observer authority, but repealed the examiner provisions since they had not been used for several years and were no longer needed.[41]

IV. THE VRA'S MAJOR PROVISIONS

Section 2

Section 2 of the VRA is a permanent nationwide prohibition against voting practices and procedures that discriminate on the basis of race, color, or membership in a language minority group. Section 2 is violated both by practices and procedures that have a discriminatory purpose and those that have a discriminatory result.[42] Section 2 is enforced through lawsuits filed in local federal courts (i.e., the court where the defendant jurisdiction is located).

The Section 2 results standard provides that a violation exists

> **if, based on the totality of the circumstances, it is shown that the political processes leading to nomination or election… are not equally open to participation by… citizens protected by [Section 2] in that [they] have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice.[43]**

A detailed explanation of this broad standard was set forth in the 1982 Senate Judiciary Committee report for the legislation. The Senate Report identified a variety of factors that may be considered in undertaking a "totality of the circumstances" analysis,[44] and in practice courts have relied upon these factors in applying Section 2.[45]

While Section 2 applies to all voting practices and procedures, it has most frequently been applied in "vote dilution" challenges to at-large election systems and redistricting plans. There have been numerous court decisions finding that at-large systems and redistricting plans violate Section 2, and there have been hundreds of Section 2 settlements requiring counties, cities, and school districts to abandon at-large voting and adopt district-based methods of election.[46] Successful Section 2 vote dilution claims like these must meet three "preconditions" first identified by the Supreme Court in *Thornburg v. Gingles*: (1) the minority population must be sufficiently numerous to comprise a majority of the eligible population in a reasonably-drawn single member district, (2) the minority voting population must be politically cohesive, and (3) minority voters' candidates of choice must generally be defeated as the result of white bloc voting.[46a] Once these preconditions are satisfied, plaintiffs must then establish a violation under the full "totality of the circumstances" analysis.[47]

Section 5

Section 5 required certain states and political subdivisions of other states to obtain federal preclearance whenever they would "enact or seek to administer any [new] voting....qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting."[48]

Section 5 applied broadly to any change affecting voting, even one that might seem minor or unobjectionable on its face.[49] Voting changes subject to Section 5 were not permitted to be implemented unless and until preclearance was obtained.[50]

Jurisdictions were required to seek preclearance either by filing suit in the U.S. District Court for the District of Columbia (requesting a declaratory judgment) or by making an administrative submission to the U.S. Attorney General.[51] Whichever forum was chosen, it was the jurisdiction that had the burden of proof, not minority citizens or the Justice Department.[52] The jurisdiction was required to demonstrate that each voting change "neither ha[d] the purpose nor will have the effect of denying or abridging the right to vote on account of race or color, or [language minority status]...."[53]

The Section 5 "effect" standard, distinct from the Section 2 "results" standard discussed above, prohibited backsliding. More specifically, Section 5 barred the implementation of any voting change "that would lead to a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise."[54] Thus, effect was evaluated by comparing minority electoral opportunity under the new practice to minority electoral opportunity under the pre-existing practice. A discriminatory effect existed if the new practice would make that opportunity worse.

As noted earlier, the states and localities subject to Section 5 were identified by a series of provisions contained in Section 4 of the Act. The Section 4 coverage formula, first enacted in 1965 and then amended in 1970 and 1975, operated as follows: jurisdictions were covered if (1) they employed a "test or device" for registration or voting at the time of the 1964, 1968, or 1972 presidential election, and (2) less than 50 percent of the jurisdiction's eligible voters registered or voted in the same election.[55] For the coverage determinations based upon the 1964 and 1968 elections, the VRA defined the term "test or device" as those practices (such as literacy tests) which, as described above, the VRA temporarily and then later permanently banned. For coverage determinations based upon the 1972 election, the meaning of "test or device" was expanded to also include the use of English-only election procedures where a language-minority citizen group constituted more than five percent of the citizen voting age population of the jurisdiction.[56]

As also discussed earlier, Section 4 coverage – and thus Section 5 – was further subject to recurring sunset provisions. Congress reauthorized and extended coverage in 1970, 1975, 1982, and 2006 after finding on each occasion that a high level of voting discrimination had continued in the Section 4 areas.

Thus, Section 5 remained in effect until *Shelby County* based upon a combination of evaluations by Congress. First, Congress relied upon the evaluations built into the coverage formula, which looked at electoral conditions existing in 1964, 1968, and 1972 to identify

those areas of the country that had a history of persistent voting discrimination.[57] Second, Congress relied upon four separate evaluations that updated Congress' assessments of whether a pattern of voting discrimination was continuing in the jurisdictions with a history of voting discrimination.

From the outset, Section 4 permitted individual jurisdictions to sue to remove themselves from coverage (to "bail out" of coverage).[58] Over the years, a number of jurisdictions took advantage of this exit ramp.[59]

As a result, at the time *Shelby County* was decided, there were nine States subject to Section 5 in their entirety – Alabama, Alaska, Arizona, Georgia, Louisiana, Mississippi, South Carolina, Texas, and Virginia. In addition, portions of six other States were covered – California (three counties), Florida (five counties), Michigan (two townships), New York (three counties in New York City), North Carolina (40 of the State's 100 counties), and South Dakota (two counties).[60]

Language assistance requirements

In 1975, Congress enacted two complementary provisions, Section 4(f)(4)[61] and Section 203,[62] requiring certain jurisdictions around the country to provide voting materials in one or more languages in addition to English. These sections incorporated identical substantive requirements for language assistance.[63] They differed in terms of the processes used to identify the covered jurisdictions. These provisions, like Section 2, are enforced through litigation filed by the Justice Department or minority individuals.

Section 4(f)(4) applied to those jurisdictions covered by the 1975 amendment to the Section 4 coverage formula. Given that the Supreme Court found the coverage formula unconstitutional in the *Shelby County* case, it is unclear whether there continue to be jurisdictions to which Section 4(f)(4) applies. The Supreme Court did not discuss Section 4(f)(4) in the *Shelby County* decision and thus did not specifically rule upon that section's continuing viability.

Section 203 relies on a different coverage formula, which takes into account the number or percentage of voting age citizens in a state or political subdivision who are members of a single language minority group and who have limited proficiency in English, and whether the illiteracy rate of the jurisdiction's language minority group is higher than the national illiteracy rate. Section 203 also includes a sunset proviso; it was reauthorized in 1982, 1992, and once again in 2006. The relevant coverage data are drawn from data collected by the U.S. Census Bureau, and thus the jurisdictions subject to Section 203 change somewhat over time. New determinations were originally made at ten-year intervals; since 2006 they are to be made at five-year intervals. Each Section 203 coverage determination is accompanied by a specification of the specific language or languages for which the jurisdiction is required to provide language assistance in the voting process.

According to the most recent determinations issued in 2011, the States of California, Florida, and Texas are fully covered under Section 203 (for Spanish), and individual counties are also separately covered in those States. Individual counties and townships are covered in 22 other States. Local jurisdictions are predominantly covered for Spanish, but many are covered for other languages including a variety of Asian, Native American, and Alaska Native languages.[64]

Sections 4(f)(4) and 203 apply to all stages of the election process, i.e., to "registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots."[65] The sections require that both written election materials and oral assistance be provided in the language of the covered language minority group.

The substantive requirements of Sections 4(f) and 203 are further described in the Attorney General's Guidelines on Implementation of the Provisions of the Voting Rights Act Regarding Language Minority Groups.[66] The Guidelines specify that covered jurisdictions "should take all reasonable steps" to provide language assistance "in a way designed to allow members of applicable language minority groups to be effectively informed of and participate effectively in voting-connected activities...."[67] The Guidelines further explain that "[c]ompliance… is best measured by results[,]" and that the requisite results are most likely to be achieved by covered areas working in close cooperation with local community organizations.[68] The Guidelines also endorse the targeting of language assistance to those language minority citizens in need, so that language assistance is not necessarily required to be provided to all eligible voters in the jurisdiction.[69]

Section 4(e) of the VRA, enacted in 1965, requires jurisdictions to provide language assistance to United States citizens who were "educated in American-flag schools in which the predominant classroom language was other than English."[70] This section primarily affects citizens who attended primary school in Puerto Rico. There is no particular geographic coverage provision attached to this section. Section 4(e) also is enforced through litigation.

Federal observers

Since 1965, the Attorney General has been authorized by Section 8 of the VRA to send federal observers into polling places located in jurisdictions covered under Section 4, provided that the Attorney General certifies a particular county or parish for observers. As with Section 4(f)(4), the *Shelby County* ruling against the Section 4 coverage formula raises the question of whether there continue to be jurisdictions that are subject to the Section 8 authority, even though *Shelby County* did not discuss Section 8. DOJ apparently has concluded that the Section 8 observer authority no longer is enforceable after *Shelby County.*

Coverage of additional areas for preclearance and federal observers

The 1965 Act also includes provisions allowing courts to designate a jurisdiction not covered by Section 4 for similar coverage for a specified time period. Under Section 3(a), a court may designate a jurisdiction for federal observers (and, before the 2006 amendments, for federal examiners as well).[71] Under Section 3(c), a court may designate a jurisdiction for preclearance of all or a subset of its voting changes.[72] These "bail in" provisions continue in effect after *Shelby County*.

Permanent prohibition of certain tests and devices for voting

Section 201 of the VRA is a permanent nationwide ban on the use of specified "tests or devices" as prerequisites to registration or voting.[73]

Other VRA provisions

Section 208 of the VRA, enacted in 1982, provides that any voter who requires assistance to vote by reason of blindness, disability, or inability to read or write may be assisted by a person of the voter's choice, other than the voter's employer or agent of the employer or officer or agent of the voter's union.[74]

Section 11(a) of the VRA prevents election officials from refusing to count legitimate votes.[75]

Section 11(b) of the VRA prohibits intimidation, threats, or coercion in the voting process and applies to private persons as well as persons acting under color of law (that is, governmental officials).[76]

V. THE TWO FORMS OF VOTING DISCRIMINATION: LIMITATIONS ON BALLOT ACCESS AND VOTE DILUTION

Voting discrimination generally may be characterized as occurring in one of two forms, restrictions on ballot access and election methods or structures that dilute minority voting strength.[77]

Ballot access restrictions

Voting practices that limit or restrict access to registration or voting may discriminate on the basis of race or language minority status (depending upon the particular practice involved and/or the circumstances in which the practice is being implemented). Practices that may be of concern include: registration limitations or the improper purging of registration rolls; a lack of bilingual assistance or ineffective bilingual assistance; limitations on early in-person voting or absentee voting; a photo ID requirement for in-person voting; the elimination of polling places or polling place changes; voter intimidation; and restrictions on candidate qualifications or on candidate qualification procedures.

Minority vote dilution

Voting practices that may dilute minority voting strength are those election methods or structures which, in the context of racially polarized voting, tend to minimize or cancel out the ability of minority voters to elect their preferred candidates to office. Such practices may include: at-large election systems; multi-member election districts; redistricting plans that unnecessarily fragment minority areas or pack minority voters into a limited number of districts; and annexations of white residential areas that either fence out minority residential areas or reduce a city's minority population percentage in the context of at-large voting.

Discriminatory ballot-access restrictions are sometimes referred to as "first generation" discrimination and vote dilution as "second generation" discrimination. This reflects the fact that, historically, restrictions on ballot access were often the initial method chosen to deny or abridge the right to vote, and vote dilution was undertaken only after minority voters gained access to the ballot at least to some extent.[78] However, in reality, both types of discrimination may occur concurrently, and instances of "first generation" discrimination may follow after "second generation" discrimination. Nor is it accurate to view "second generation" discrimination as something that occurred only after the VRA was adopted, or to view "first generation" discrimination as something that existed only in the past.

For example, there is a long history of "second generation" voting discrimination in Alabama that predates the VRA. In 1911, although the State had almost completely disenfranchised its African-American citizens, the City of Mobile, Alabama changed to an at-large method of

electing its city government "to reinforce the 1901 [State] Constitution as a buttress against the possibility of black office holding."[79] Later in the 1950s, although African-American registration remained depressed, the Alabama Legislature redrew the boundaries of the City of Tuskegee to remove 99 percent of the city's African-American population.[80] The author of that legislation also sponsored legislation that banned the technique of single-shot voting in at-large elections for county commissioners across Alabama, out of a concern that those African Americans who were registered to vote might use this technique to elect individuals to office.[81]

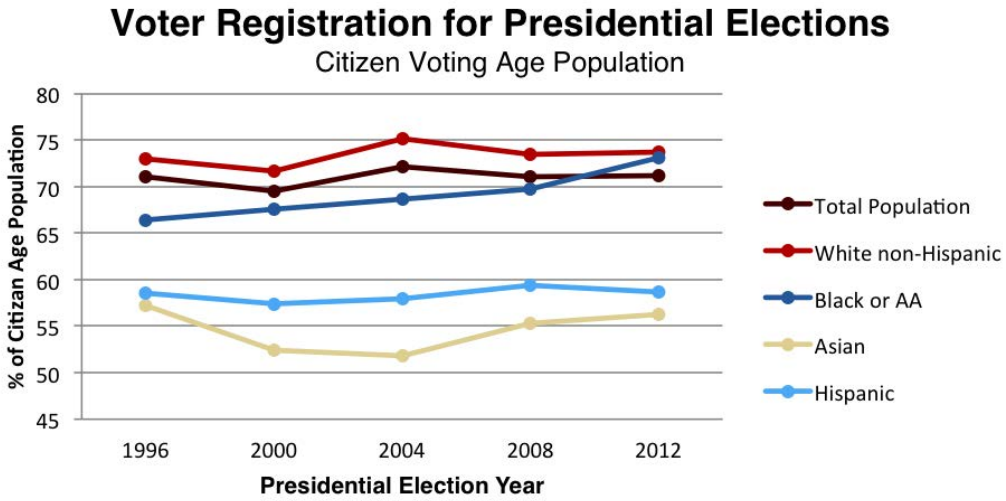
On the other hand, "first generation" discrimination clearly remains a present-day concern. For example, as discussed in detail in Chapter 6, several States recently have enacted photo ID laws that, because of their particular provisions, discriminate against minority voters.

VI. IMPACT OF THE VRA ON MINORITY ELECTORAL OPPORTUNITY, 1965 TO 1995

The impact of the VRA on our Nation's political processes has been profound. The opportunity of minority citizens to register, vote, and elect candidates of choice dramatically improved from 1965 to 1995, most notably in the South and Southwest, but throughout the country as well.[82]

The initial focus of the VRA in 1965 on removing barriers to voter registration by African Americans had the desired result to a substantial degree. Within about six years of the enactment of the VRA, the combined African-American registration rate in the States of Alabama, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, and Virginia climbed to about 57 percent, almost 30 points higher than that rate had been in March 1965. Still, the African-American registration rate in 1971-72 remained a substantial eleven points below the white registration rate in those States.[83] Through continued enforcement efforts, the African-American registration rates further improved thereafter, such that by the time of the 2006 reauthorization the African-American rates were comparable to the white registration rates in most of the South, with a few exceptions.[84]

However, the efforts that began in the mid-1970s to address discrimination against language minority citizens have not yielded the same results. As shown on the graph on the following page, substantial disparities between registration rates for language minority citizens and whites are continuing.[85]



As Congress anticipated in 1965, the enactment of the VRA was followed by a series of new discriminatory measures in the specially covered areas. For example, in 1965 Mississippi repealed provisions allowing illiterate voters to receive assistance in voting, and in 1966 adopted a state law to enable county boards of supervisors to switch from district to at-large elections. DOJ interposed Section 5 objections to both changes.[86] Other examples included Georgia's adoption of restrictions on assistance to illiterate voters, to which the DOJ objected in 1968,[87] and South Carolina's adoption of a discriminatory redistricting plan for its state senate, to which the DOJ objected in 1972.[88]

By 1975, a pattern of conduct by Section 4 jurisdictions was apparent. As the House Judiciary Committee observed in its 1975 report supporting Section 5's reauthorization,

> **[t]he recent objections entered by the Attorney General… to Section 5 submissions clearly bespeak the continuing need for [the Section 5] preclearance mechanism. As registration and voting of minority citizens increases, other measures may be resorted to which would dilute increasing minority voting strength. Such other measures may include switching to at-large elections, annexations of predominantly white areas, or the adoption of discriminatory redistricting plans."[89]**

This did not mean, however, that ballot access discrimination had ended, as Section 5 objections were also interposed to many such changes.[90]

In the years after 1975, this pattern continued. During the remainder of the 1970s, and then in the 1980s, 1990s, and into the 2000s, a majority of the objected-to voting changes involved discriminatory election methods, redistrictings, and annexations.[91] Objections to changes affecting ballot access were also interposed. Congress reiterated its particular

concern about "second generation" discrimination that would undo the "first generation" progress when it reauthorized Section 5 in 1982[92] and again in 2006.[93]

A positive pattern also emerged in the 1970s and continued with increasing force in the 1980s and 1990s: a substantial number of cities, counties, and school districts – particularly in the areas subject to Section 5 – changed from at-large to district election systems. The initial impetus was a Supreme Court decision in 1973, *White v. Regester*, overturning multi-member districts for the Texas Legislature on the ground that they diluted African-American and Latino voting strength in violation of the 14th Amendment.[94] Other successful dilution suits based on the 14th Amendment followed. In 1980, however, the Supreme Court did a sharp U-turn in its *Mobile v. Bolden* decision, substantially re-interpreting the constitutional cause of action and making it much more difficult for plaintiffs to prevail.[95] As explained above, Congress then amended Section 2 in 1982 to revive the pre-*Mobile* standard by creating the new Section 2 results test. Thereafter, hundreds of Section 2 suits were filed leading to decisions and settlements in which at-large systems were abandoned, and many other localities abandoned at-large systems in anticipation that they might be sued. Section 5 objections to dilutive annexations also led to the adoption of district election methods.[96]

Finally, lawsuits also were brought under Section 2 challenging discriminatory redistricting plans, particularly (although not exclusively) in the areas not subject to Section 5. For example, in 1990 the Ninth Circuit Court of Appeals upheld a district court ruling invalidating the redistricting plan for the Los Angeles County Board of Supervisors because it discriminated against Latino voters.[97] This led to the election of the first Latino to the Board in over a century.[98]

VII. SUPREME COURT'S LIMITS ON SECTION 5, CONGRESS' RESPONSE, AND THE SUPREME COURT'S DECISION IN *SHELBY COUNTY V. HOLDER*

After 1995, the Supreme Court issued three decisions substantially curtailing the scope of the Section 5's nondiscrimination requirements. Then, in 2013, the Court issued its decision in *Shelby County v. Holder*, which effectively nullified the preclearance requirement.

- In 1997, the Supreme Court ruled in *Reno v. Bossier Parish School Board* that, a finding that a voting change had a discriminatory result under Section 2 of the VRA could not be used to object to a voting change under Section 5 of the VRA.[99]

- In 2000, the case returned to the Supreme Court, and the Court held in *Bossier Parish II* that Section 5 is generally not violated where a jurisdiction adopts a voting change with a discriminatory intent if the change would not make minority voters worse off compared to what existed before.[100] The Bossier Parish school district intentionally drew its post-1990 redistricting plan to avoid creating even one majority African American single-member district, but this discriminatory intent did not violate Section 5, according to the Court, because the old plan did not include any majority African American districts either and thus the new plan was not retrogressive or intended to be retrogressive.[101] The Court's ruling was particularly troublesome because it meant that DOJ and the federal court in Washington D.C. would now be required to preclear intentionally discriminatory practices, contrary to their prior practice[102] and inconsistent with prior decisions by the Supreme Court.[103]

- In 2003, in *Georgia v. Ashcroft*, the Supreme Court substantially re-interpreted the Section 5 retrogression standard as applied to redistricting plans. The Court held that redistricting reviews were required to take into account minority "influence districts" in addition to considering those districts where minority voters would have the opportunity to elect their preferred candidates.[104] This was highly problematic since it is unclear what constitutes a minority "influence district" and, whatever the term means, it is questionable whether such districts, in the context of racially polarized voting, in fact offer much if any real opportunity to minority voters to influence elections.[105]

As noted, as part of the 2006 reauthorization of Section 5, Congress amended Section 5 in response to *Bossier Parish II* and *Ashcroft*. The amendments essentially returned the statute to the discrimination standards that pre-dated the Supreme Court decisions.[106]

Shelby County v. Holder was filed in the U.S. District Court for the District of Columbia by Shelby County, Alabama on April 27, 2010. The federal judge hearing the case conducted a thorough review of the record before Congress and concluded that the 2006 reauthorization was constitutional.[107] On appeal, the U.S. Court of Appeals for the District of Columbia Circuit conducted its own review of the record and agreed with district court ruling, with one judge dissenting.[108]

The Supreme Court then took the case and, on June 25, 2013, reversed the judgment of the district court and held that the Section 4 formula that determined which states or jurisdictions had to seek federal review for their voting changes is unconstitutional.[109] The Court did not address the constitutionality of the preclearance remedy. As a result, today, no jurisdiction is subject to the Section 5 preclearance requirement. As noted above, the Section 4(f)(4) prohibition on English-only elections and the Section 8 authority for federal observers also apply only to Section 4 jurisdictions, and although neither provision was at issue in or mentioned in *Shelby County*, DOJ does not appear to be enforcing either provision.

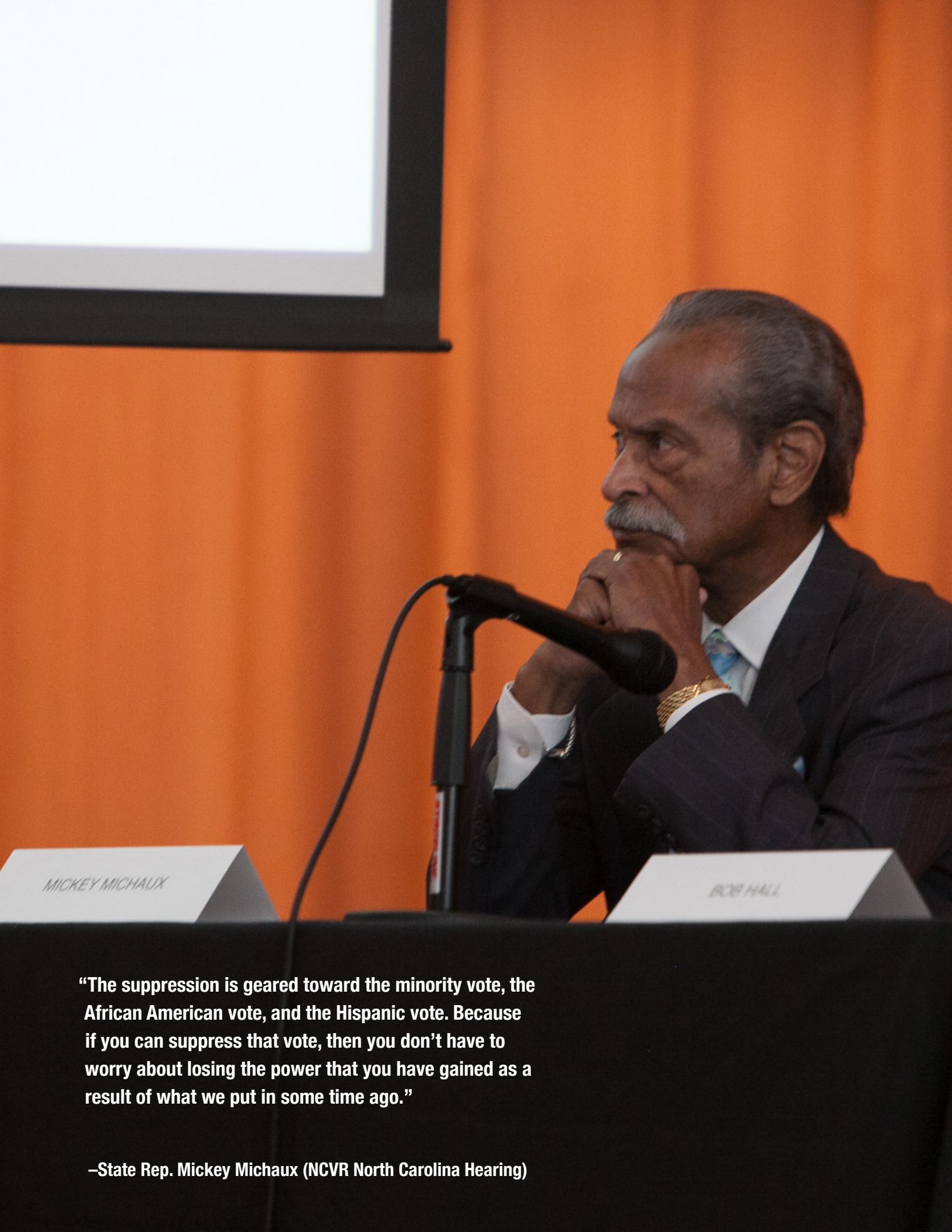
In the 5 - 4 decision, Chief Justice Roberts concluded that the Section 4 coverage provisions were not properly based on "current needs" because the Section 4 coverage formula was based on electoral conditions in 1964, 1968, and 1972.[110] The Chief Justice thereby ignored the fact that Section 5's reauthorization in 2006, like the reauthorizations that preceded it, was premised on Congress' evaluation of current needs, and that Congress had concluded in 2006 that a pattern of voting discrimination was continuing in the areas identified by the Section 4 coverage formula. Chief Justice Roberts conceded that "voting discrimination still exists; no one doubts that[,]"[111] but did not conduct any detailed review of the massive record Congress had gathered in 2005 and 2006, based on which Congress made a direct and specific legislative finding of the current need for Section 5.

Justice Ginsburg authored the dissenting opinion for herself and for Justices Breyer, Sotomayor, and Kagan.[112] Justice Ginsburg began her opinion with the following overview of the 2006 reauthorization and its constitutional validity:

> **Recognizing that large progress has been made, Congress determined, based on a voluminous record, that the scourge of discrimination was not yet extirpated. The question this case presents is who decides whether, as currently operative, §5 remains justifiable, this Court, or a Congress charged with the obligation to enforce the post-Civil War Amendments "by appropriate legislation." With overwhelming support in both Houses, Congress concluded that, for two prime reasons, §5 should continue in force, unabated. First, continuance would facilitate completion of the impressive gains thus far made; and second, continuance would guard against backsliding. Those assessments were well within Congress' province to make and should elicit this Court's unstinting approbation.[113]**

And, as Justice Ginsburg stated later in her opinion, "[t]hrowing out preclearance when it has worked as and is continuing to work to stop discriminatory changes is like throwing away your umbrella in a rainstorm because you are not getting wet."[114]

The consequence of *Shelby County* is that all the previously covered states and localities are now able to implement voting changes without advance federal review to determine whether the new practices are discriminatory. As was true before 1965, the burden is now back on the DOJ and minority citizens to identify and obtain court judgments against discriminatory voting practices in the jurisdictions with the worst histories of voting discrimination.



"The suppression is geared toward the minority vote, the African American vote, and the Hispanic vote. Because if you can suppress that vote, then you don't have to worry about losing the power that you have gained as a result of what we put in some time ago."

–State Rep. Mickey Michaux (NCVR North Carolina Hearing)

CHAPTER 2
National Overview Of Voting Discrimination, 1995–2014

Racial voting discrimination remains a serious problem in the United States. Several states, especially Texas, have shown a pattern of repeated and varied violations since 1995. Texas and other states with the worst records each: (1) have significantly more documented indicators of voting discrimination than average; and (2) were covered under Section 4(b) of the Voting Rights Act (VRA) prior to the *Shelby County* decision. This pattern is clearly seen in the post-1995 record of at least 171 successful lawsuits under Section 2 of the VRA, 113 Section 5 preclearance denials and 48 successful lawsuits and ten non-litigation settlements enforcing the language assistance provisions of the VRA.[1]

The voting rights record reviewed in this chapter focuses upon three types of compliance issues arising under the Voting Rights Act since 1995:

- Affirmative litigation brought in federal court under Section 2 of the VRA, including challenges to redistricting plans and methods of election (including at-large elections) that minimize or cancel out the ability of minority voters to elect their preferred candidates to office (i.e., vote dilution challenges), and vote denial challenges to other voting practices involving access to the ballot (bilingual procedures are treated separately);

- Section 5 preclearance denials, either in the form of administrative objections interposed by the United States Department of Justice (DOJ) or in litigation before a three-judge panel in the United States District Court for the District of Columbia, along with denials of preclearance for jurisdictions covered under Section 3(c) of the VRA; and

- Cases concerning bilingual election assistance for language minority voters, brought under Sections 203, 4(f)(4), and 4(e) of the VRA, as well as related claims brought on occasion under Section 2 and Section 208 of the VRA.

Separate listings identifying each individual matter in the three categories are included in the Supplemental Online Appendix (http://votingrightstoday.org/ncvr/resources/discriminationreport). While these categories are not the only relevant indicators of voting discrimination, each one sheds light on the critical questions of how frequently voting discrimination occurs today and whether it is geographically concentrated.[2]

PHOTO CREDIT: ALLISON MEDER

As shown in Table 1, between January 1995 and June 2014 over 300 lawsuits or administrative determinations under the VRA led to the prohibition, abandonment, or alteration of a variety of voting practices at both the state and local levels. While one or more of these matters occurred in 31 different states, the activity was heavily concentrated in the jurisdictions that were specially covered under Section 4(b) at the time of *Shelby County*. In fact, approximately three-fourths of these matters involved Section 4(b) jurisdictions.

Table 1: VRA Enforcement: January 1995 to June 2014

Type of Enforcement Matter	Number of Matters	Number of Matters Involving a State-Level Practice	Number of Matters Involving Jurisdictions That Were Covered Under Section 4	Number of Matters, By Type of Voting Practice at Issue
Preclearance Denials	113	21	113	58 Redistricting 20 Methods of election/selection 7 Jurisdictions' annexations/de-annexations 20 Ballot access (not bilingual) 4 Bilingual
Section 2 (non-bilingual) Cases	171	16	123	30 Redistricting 123 Methods of election/selection 21 Ballot access
Bilingual Cases	58	2	15	58 Bilingual

As shown in Tables 2, 3, and 4, Texas, a state fully covered by Section 4(b), had, by far, the greatest overall number of enforcement matters—over 110. Four states—Georgia, Louisiana, Mississippi, and New York—had between 20 and 28 enforcement matters each; three of these states were wholly covered under Section 4(b) and New York was partially covered (i.e., some local jurisdictions were covered and therefore subject to the Section 5 preclearance requirement though the state as a whole was not). Three states had between 13 and 19 enforcement matters each—California, Florida, and South Carolina; South Carolina was fully covered by Section 4(b) and California and Florida were partially covered.

Minority vote dilution was the problem in most of the Section 2 litigation and Section 5 preclearance denials, in the form of discriminatory redistricting plans or methods of election. However, discriminatory access to the ballot comprised a sizable minority of the Section 2 cases and Section 5 preclearance denials as well. The numerous lawsuits under the language assistance provisions of the VRA showed widespread failure by local jurisdictions to comply with those provisions.

Rogene Gee Calvert, director of the Texas Asian American Redistricting Initiative testified about the need for additional bilingual poll workers in Harris County, which now mandates Vietnamese and Chinese language assistance; she also discussed the difficulty Asian seniors have in obtaining proper documents to get a photo ID. (NCVR Texas Hearing) PHOTO CREDIT: SAMUEL WASHINGTON

About 10 percent of these enforcement matters (identified in Table 1) dealt with state-level voting practices. That is, about 10 percent dealt with practices adopted by or being administered by a state; in some instances, the discriminatory effect of these practices was statewide or nearly so, while in other instances the discrimination was more localized.

In its *Shelby County* decision, the Supreme Court admonished Congress to consider current conditions when it acts to address voting discrimination through a preclearance requirement. As discussed in detail below, the current conditions show that voting discrimination is a serious present-day problem and occurs most frequently in specific states.

I. LITIGATION UNDER SECTION 2 OF THE VRA

Section 2 of the VRA has applied nationwide since it was enacted in 1965. The record of successful lawsuits brought under Section 2 is not, on its own, sufficient to show the full extent of voting discrimination, but it is the logical point at which to begin that assessment. If voting discrimination is no longer a serious problem in the United States, then the overall number of successful Section 2 cases should be small, and the cases should either be evenly distributed among the states, or there should be fewer Section 2 cases in the states

formerly covered under Section 4(b) (since their voting changes had been federally screened for decades).[3]

In fact, there were at least 171 successful Section 2 cases since 1995, an average of nearly nine per year.[4] These included 16 state-level cases where a state law or practice, rather than a local one, was in question. Nearly 90 percent of the practices that were successfully challenged under Section 2 involved vote dilution claims, principally redistricting plans or at-large voting rules. These cases are summarized in Table 2 and are listed individually in the Supplemental Online Appendix.

Table 2: Successful Section 2 Cases: January 1995 to June 2014

State	Number of Cases	Coverage Under Section 4	State-Level Cases	Successfully Challenged Practices[ab]
TOTAL (27 States)	171	123 cases dealt with jurisdictions covered under Section 4	16 cases	Ballot access (21); Method of election (123); Redistricting (30)
Alabama	2	State	--	Method of election (1); Redistricting (1)
Arizona	1	State	1	Voter identification for in-person voting (Native American tribal members)
Arkansas	2	None	--	Election schedule (1); Method of election (1)
California	4	Partial (1 case)	1 (voting method)	Method of election (2); Redistricting (1); Voting method (1)
Colorado	2	None	1 (redistricting)	Method of election (1); Redistricting (1)
Florida	6	Partial (2 cases)	2 (poll worker training, provisional ballots, voting method, voter purges)	Method of election (4); Poll worker training (1); Provisional ballots (1); Voter purge (2); Voting method (1)
Georgia	9	State	--	Method of election (6); Redistricting (2); Voter challenges (1)
Hawaii	1	None	1	Candidate qualification
Illinois	5	None	1 (voting method)	Candidate qualification (1); Method of election (1); Redistricting (2); Voting method (1)
Louisiana	6	State	--	Method of election (2); Redistricting (5)
Massachusetts	2	None	1 (legis. redistricting)	Method of election (1); Redistricting (2)
Michigan	1	None	--	Race-based polling place challenges

State	Number of Cases	Coverage Under Section 4	State-Level Cases	Successfully Challenged Practices[ab]
Mississippi	13	State	--	Method of election (7); Redistricting (5); Voter intimidation (1)
Montana	5	None	--	Method of election (4); Registration and early voting sites (1)
Nebraska	1	None	--	Method of election
New York	5	Partial (1 case)	1 (voting method)	Method of election (2); Redistricting (2); Voting method (1)
North Carolina	2	Partial (both cases)	--	Method of election (2)
North Dakota	2	None	--	Method of election (1); Polling place (1)
Ohio	2	None	--	Method of election (2)
Pennsylvania	1	None	--	Polling place
Rhode Island	1	None	1 (legis. redistricting)	Redistricting
South Carolina	3	State	--	Method of election (3)
South Dakota	7	Partial (1 case)	2 (legis. redistricting & method of election)	Early voting (1); Method of election (2); Redistricting (3); Voting qualifications (1)
Tennessee	3	None	1 (legis. redistricting)	Method of election (1); Redistricting (2)
Texas	82	State	1 (cong. redistricting)	Method of election (78); Redistricting (2); Unknown (2)
Wisconsin	2	None	2 (photo ID; legis. redistricting)	Photo ID requirement (1); Redistricting (1)
Wyoming	1	None	--	Method of election

a Bilingual Section 2 claims are included together with other claims under the VRA language assistance provisions (see Table 4).
b A few lawsuits involved more than one voting practice.

These cases were—by an overwhelming margin—disproportionately concentrated in the states that were covered by Section 4(b) of the VRA at the time of *Shelby County v. Holder*. Specifically, nearly three-quarters (123 of 171) of the successfully resolved Section 2 lawsuits were brought in jurisdictions that were covered under Section 4(b).[5] By contrast, the 2000 census data showed that more than three-fourths of the nation's total population lived in non-covered areas, as did substantial majorities of the African-American (61 percent), Hispanic (68 percent), and Native American (75 percent) populations.[6]

Thus, one quarter of the nation's population resided in states or counties that prompted three-quarters of all successful Section 2 claims.

Approximately two-thirds (110) of the successful Section 2 suits were brought against jurisdictions in just four states: Georgia, Louisiana, Mississippi, and Texas. These included three state-level cases.

The Section 2 record in Texas is indisputably the worst of any state, both qualitatively and quantitatively. Texas alone accounted for about half of the successful Section 2 litigation since 1995.

The Supreme Court's 2006 decision in *LULAC v. Perry*,[7] which found that Texas' congressional redistricting plan violated Section 2 of the VRA and bore the "mark of intentional discrimination that could give rise to an equal protection violation,"[8] was but one instance where federal courts have found racial discrimination in a Texas statewide redistricting plan.[9] As discussed in more detail in Chapter 5, after having lost the *LULAC* case before the Supreme Court, based upon the racial gerrymandering of Congressional District 23 in West Texas, the Texas legislature used its next opportunity for redistricting to do precisely the same thing in the State's 2011 congressional redistricting plan, which a three-judge court found to be intentionally discriminatory and retrogressive under Section 5.[10]

California provides an informative contrast to Texas. California has had relatively few successful Section 2 cases since 1995. However, California did have extensive litigation under the language assistance provisions of the VRA, which coincided with a rapidly growing minority population and no shortage of racial tensions. The relatively small number of Section 2 cases in California might be seen as an anomaly given these other factors, but that can be largely explained because California has a state law, the California Voting Rights Act (CVRA),[11] that has been used to change the method of electing city councils and school boards from at-large to single-member districts. The legal showing that plaintiffs must make under the CVRA is somewhat less demanding than under Section 2 of the VRA, but there is little doubt that California would have seen a much greater number of Section 2 cases without the CVRA.[12] Unfortunately, California is the only state that provides a statutory remedy for vote dilution in local governmental election systems.

II. PRECLEARANCE DENIALS UNDER SECTION 5 OF THE VRA

Preclearance was denied on 113 occasions since 1995. DOJ issued 109 objection letters including 108 objections to voting changes covered under Section 5 and one objection concerning a jurisdiction covered under Section 3(c).[13] The U.S. District Court for the District of Columbia (DDC) denied preclearance on four occasions.[14] These 113 preclearance denials are summarized in Table 3 and listed individually in the Supplemental Online Appendix.[15]

Table 3: Administrative and Judicial Preclearance Denials: January 1995 to June 2014[a]

State	Coverage Under Section 4	Objection Letters[b]	DDC Denials[cd]	State-Level Denials	Types of Voting Changes Denied Preclearance[e]
TOTAL		109	4	21	20 Ballot access (non-bilingual) (10 state-level); 4 Bilingual (1 state-level); 7 Jurisdictions' annexations and de-annexations; 20 Methods of election/selection (1 state-level); 58 Redistricting (8 state-level)
Alabama	State	3	0	0	Annexation (2 cities); Redistricting (2)
Alaska	State	0	0	N/A	
Arizona	State	2	0	1	Method of election (1); Redistricting (1 state-level)
California	Partial	1	0	0	Method of election
Florida	Partial	2	1	3	Absentee voting procedure (1 state-level); Redistricting (1 state-level); Reduction in early voting hours (1 state-level)
Georgia	State	14	0	2	Election date (1 state-level); Method of election (2); Polling place (1); Redistricting (8); Voter registration/candidate qualification (1); Voter registration procedure (1 state-level)
Louisiana	State	21	0	3	Annexation (5 objections for a city court); Precinct change procedure (2 state-level); Redistricting (13 with 1 state-level); Reduction in size of elected body (1)
Michigan	Partial	1	0	0	Voter registration location
Mississippi	State	15	0	3	Annexation (1 city); Candidate qualification (1 state-level); Election cancellation (2); Method of election (1 state-level); NVRA implementation plan (1 state-level); Polling place (1); Redistricting (9); Special election (1)
New York	Partial	2	0	0	Changing an elected position to appointed (1); Method of election (1)
North Carolina	Partial	6	0	1	Method of election (3); Redistricting criteria (1 state-level); Redistricting (2)
South Carolina	State	15	1	2	Annexation (1 city); Defunding of school district (1); Method of election (4); Photo ID requirement (1 state-level); Redistricting (8 with 1 state-level); Reduction in size of elected body (1)

State	Coverage Under Section 4	Objection Letters[b]	DDC Denials[cd]	State-Level Denials	Types of Voting Changes Denied Preclearance[e]
South Dakota	Partial and Section 3(c)	1	0	0	Redistricting (Section 3(c))
Texas	State	20	2	6	Redistricting (8 with 4 state-level); Redistricting criteria (1); Method of election (5); Annexation, de-annexation (2 cities); Registration procedure (1 state-level); Photo ID req't (1 state-level); Bilingual procedure (4 with 1 state-level); Candidate qualification (1 state-level); General election procedure (1); Polling place & early voting location (1); Voting method (1)
Virginia	State	6	0	0	Method of election (1); Polling place (1); Redistricting (5)

a *Shelby County v. Holder* did not affect the ability of the Attorney General to interpose objections to changes affecting voting in jurisdictions covered by federal court preclearance orders under Section 3(c) of the VRA, but no such objections have been issued since June 2013.

b Administrative objections in this table are counted by objection letter, as opposed to the total number of voting changes objected to. Judicial preclearance denials are similarly counted in this table by lawsuit, as opposed to the total number of voting changes denied preclearance. On multiple occasions, a single objection letter blocked multiple voting changes, and in one judicial preclearance action the D.D.C. denied preclearance to three Texas statewide redistricting plans. The counts of administrative objections and D.D.C. denials are therefore conservative. The objection figures also exclude six objections withdrawn by the Attorney General based upon changes in fact or law, and exclude one other objection after which the United States consented to judicial preclearance.

c DDC refers to the U.S. District Court for the District of Columbia.

d Two administrative objections were followed by judicial preclearance denials in South Carolina and Texas (these two are included in this table in the counts of DDC denials, and not in the objection letters counts); two other judicial preclearance denials from Texas and Florida concerned voting changes for which no administrative preclearance decision was made.

e The counts in this column refer to specific voting changes denied preclearance, and thus will sum to a greater number than the counts of administrative objection letters and D.D.C. judgments that denied preclearance, per note b.

Texas and Louisiana vie for the worst Section 5 record. Texas had 22 total preclearance denials (20 administrative objections from the DOJ and two judicial preclearance denials), six of which were state-level in scope. Louisiana, a far smaller state, had a total of 21 preclearance denials, three of which were state-level in scope. Texas and Louisiana are followed closely by South Carolina (16 denials, two at the state level), Mississippi (15 denials, three at the state level), and Georgia (14 denials, two at the state level). These five states together accounted for four-fifths of the preclearance denials since 1995.

About a fifth (21) of the 113 total preclearance denials concerned voting changes at the state level—either statewide redistricting plans or state laws of general applicability. In the case of statewide redistricting plans, the concerns often focused upon a limited number of districts or geographic areas, but a preclearance denial for a statewide redistricting plan represented a determination that the plan would reduce or deliberately restrict minority representation across the state as a whole. The other state-level laws for which preclearance was denied restricted minority voters' access to the ballot, and applied generally across an entire state and had the potential to affect the electoral opportunities of hundreds of thousands—or even millions—of minority citizens in the affected state.

These 113 preclearance denials blocked the implementation of 58 redistricting plans (eight of which were at the state level); 20 changes to jurisdictions' methods of election/selection (one of which was at the state level); annexations or de-annexations involving seven jurisdictions; 20 restrictions on ballot access (10 at the state level); and four changes affecting bilingual procedures (one at the state-level).

Vote dilution was the issue in most preclearance denials (redistricting plans and method of election changes). At the same time, nearly one-quarter of all preclearance denials concerned discrimination in restricting ballot access. A number of these denials were at the state level, and included some of the most controversial recent voting law changes, such as photo identification requirements in Texas and South Carolina and cutbacks to early voting in Florida. It remains to be seen whether Section 2 will prove to be as effective as Section 5 in dealing with such problems. At a minimum, the loss of Section 5 has required private citizens and civil rights groups (joined by the DOJ) to assume the considerable burden of litigating Section 2 ballot access challenges in Texas and North Carolina.

Section 5 preclearance denials do not represent a nationwide sample of jurisdictions, but they are highly relevant to the national picture for a number of important reasons.

> **"As the redistricting process unfolded, we saw there would be no transparency. Changes in House districts […] seemed motivated by partisan and racial gerrymandering," testified Dierdre Payne of the League of Women Voters of Mississippi at the NCVR Mississippi state hearing.**

First, Section 5 preclearance denials were documented determinations by either the Department of Justice or a three-judge federal court. Any administrative determination could be reviewed de novo by a three-judge court, meaning that, unlike typical litigation challenging federal agency decisions, the court began with a fresh record and was not required to defer to the DOJ's fact findings or interpretation of the law. The DOJ therefore had to hew closely to how the D.C. Court would construe the law and the facts—assuming the role of a surrogate for the D.C. Court—when making administrative determinations.[16]

Second, vote dilution objections to redistricting plans and method of election changes rested in significant part upon findings that voting was racially polarized in the relevant areas. Racially polarized voting is a fact-based determination that does not rely upon generalized assumptions, and it is a key factor in Section 2 vote dilution litigation. These findings of racially polarized voting reflected considerable quantitative analysis by the Department of Justice, even if they were expressed in a summary form in objection letters. This "screening" for racially polarized voting provides an important reason to believe that many of the voting changes blocked by Section 5 preclearance denials would otherwise have been found to violate Section 2.

Third, the 113 preclearance denials in the covered jurisdictions since 1995 show that the Section 2 record in the covered jurisdictions—representing about three-fourths of all successful Section 2 cases—is a very conservative measure of the concentration of voting discrimination. Not every voting change that was blocked by a preclearance denial would have resulted in a successful Section 2 case, but there can be no doubt that Section 5 significantly reduced the need for Section 2 suits in the covered jurisdictions. This is true based solely upon the record of preclearance denials, and it is even more so the case if the deterrent effect Section 5 had on state and local decision-makers is properly credited, as discussed in Chapter 3.

III. LITIGATION UNDER THE LANGUAGE ASSISTANCE PROVISIONS OF THE VRA

Since 1995, there have been 48 cases involving successful claims relating to oral and/or written language assistance under the VRA. Additionally, there have been ten non-litigation settlements involving enforcement of the VRA's language assistance provisions. Most of these matters were brought under Section 203, but some were brought under Section 4(f)(4), Section 4(e), Section 2, and Section 208. The vast majority of these cases were resolved by consent decrees or other settlements. These cases are summarized in Table 4 and are listed individually in the Supplemental Online Appendix.

Table 4: Successful Bilingual Election Cases: January 1995 to June 2014

State	(Count for the State) Subjurisdictions Involved	Covered Under Section 4	Affected Language Minority Group/ Language[a] & Case Count
TOTAL (16 States)	48 cases (2 state-level); 10 non-litigation settlements	13 cases and 2 non-litigation settlements dealt with jurisdictions covered under Section 4	1 Bengali 7 Chinese 1 Creole 1 Ilocano 1 Japanese 2 Keresan 2 Korean 1 Lakota 3 Navajo 46 Spanish 1 Tagalog 4 Vietnamese 1 Yup'ik
Alaska	(1) State	Yes	Yup'ik
Arizona	(1) Cochise County	Yes	Spanish
California	(10) Alameda County (two cases); Riverside County; San Benito County; San Diego County; Ventura County; and the Cities of Azusa, Paramount, Rosemead, and Walnut (all cities in Los Angeles County)	No	4 Chinese; 1 Korean; 8 Spanish; 1Tagalog; 2 Vietnamese
Florida	(4) Miami-Dade County; Orange County; Osceola County; Volusia County	No	1 Creole; 3 Spanish
Hawaii	(1) State	No	1 Chinese; 1 Ilocano; 1 Japanese
Illinois	(1) Kane County	No	Spanish
Massachusetts	(4) City of Boston; City of Lawrence; City of Springfield; City of Worcester (non-litigation)	No	1 Chinese; 4 Spanish; 1 Vietnamese
Nebraska	(1) Colfax County	No	Spanish
New Jersey	(2) Passaic County and City of Passaic; Salem County and Penns Grove	No	2 Spanish
New Mexico	(3) Bernalillo County; Cibola County; Sandoval County	No	1 Keresan; 3 Navajo
New York	(13) Orange County; Suffolk County; Westchester County; New York City (Kings, New York, & Queens Counties); New York City (Queens County); Duchess, Montgomery, Putnam, Rockland, Schenectady, Sullivan, & Ulster Counties (separate non-litigation agreements with State AG); Brentwood Union Free School District	One case involved a covered jurisdiction	1 Bengali; 1Chinese; 1 Korean; 11 Spanish

State	(Count for the State) Subjurisdictions Involved	Covered Under Section 4	Affected Language Minority Group/ Language[a] & Case Count
Ohio	(2) Cuyahoga County; Lorain County	No	2 Spanish
Pennsylvania	(2) Berks County; Philadelphia County	No	2 Spanish
South Dakota	(1) Shannon County (non-litigation settlement)	Yes	Lakota
Texas	(11) Brazos County; Ector County; Fort Bend County; Galveston County; Hale County; Harris County; City of Earth (Lamb County); Littlefield Independent School District (ISD); Post ISD; Seagraves ISD; Smyer ISD	Yes	10 Spanish; 1 Vietnamese
Washington	(1) Yakima County	No	Spanish

a Some cases involved more than one language for which voting assistance was required in addition to English.

Sections 203, 4(f)(4) and 4(e) of the VRA place specific responsibilities upon election administrators to provide the effective written and oral assistance that is required for a segment of the language minority population.[17] These responsibilities are widely understood by the affected jurisdictions. The DOJ individually notifies each political subdivision that comes under Section 203 coverage of its responsibilities and also provides guidance and offers DOJ's assistance.[18] Thus, there is little reason to provide the "benefit of the doubt" to election administrators in Section 203 covered areas who fail to provide bilingual assistance that is specifically required by federal law. Instead, such noncompliance is better understood as involving a choice to evade those responsibilities for as long as possible, and it is fair to count such cases as evidence of voting discrimination.

Most of the 48 cases and ten non-litigation settlements identified in Table 4 involving minority language assistance issues did not arise in jurisdictions covered under Section 4(b) of the VRA. However, 15 did involve Section 4(b) jurisdictions: 11 in Texas and one each in Alaska, Arizona, New York, and South Dakota. On this measure Texas once again stands out as having the worst record among the Section 4(b) covered states.

Apart from the states covered by Section 4(b), the most successful cases, a total of 13, were in New York. These included two cases involving New York City, 10 concerning counties (including seven non-litigation settlements initiated by the New York Attorney General), and one against a school district. California had 10, including six cases against counties (Alameda being sued twice by DOJ) and four cases against municipalities within Los Angeles County.

Spanish was the language most often involved in these cases (46 of the 58). Asian languages were involved in 10 cases; Native American languages in four cases; an Alaskan Native language in one case; and Creole in one case.

These cases typically involved two basic issues: the translation of written materials and the availability of oral assistance to language minority voters. Some cases also involved claims that language minority voters were subjected to hostile treatment by poll workers and election officials.

In some of these cases no written materials were translated, while in other cases there were significant gaps in the types of documents that were translated, or problems with quality of the translations. Fortunately, this is a relatively straightforward form of noncompliance to remedy, once there is an enforceable commitment to do so.

The failure to provide adequate oral assistance was most typically the more challenging issue in these cases. The Department of Justice's policy is that targeting oral assistance to precincts with a demonstrated need is the most effective means of complying with the language minority requirements.[19] However, many jurisdictions that were sued lacked any program to identify the need for bilingual assistance in the first place, or to deploy competent bilingual poll workers in appropriate numbers to appropriate locations. The remedies for these problems typically included the designation of a bilingual program manager, who is made responsible for conducting outreach to the community to identify those areas where assistance is needed, recruiting bilingual poll workers, and supervising their deployment.

In a number of these cases brought outside the Section 4(b) covered jurisdictions, the Department of Justice and the defendant jurisdiction agreed to the court-ordered certification of the jurisdiction for federal observer coverage pursuant to Section 3(a) of the VRA. Federal observers were critically important to monitor the quality of translations being provided at the polling places and to identify occasions upon which minority voters were treated in a hostile or discriminatory manner.

One additional area of VRA noncompliance that came to light in some of these cases was poll workers' refusal to allow language minority voters to their assistance of choice in the polling place, including friends or family members. Under Section 208 of the VRA, voters are generally entitled to receive assistance from the person of their choice.[20] Compliance with Section 208 is particularly important in those jurisdictions that are not required to provide translated written materials. It is also important to voters who speak a language for which Section 203 does not require their jurisdiction to provide language assistance.

"I am a registered voter. I have a valid state ID. I speak reasonably well. I present myself reasonably well, and I got challenged for early voting. […] my address was correct. It matched my ID. And the woman said to me, 'Well, are you sure this is all correct?'"

–Testimony from Cynthia Spooner, former sworn deputy voter registrar and election precinct judge, about her experience voting in Harris County, Texas. (Texas NCVR hearing)

CHAPTER 3
What Has Been Lost as a Result of *Shelby County v. Holder*

This chapter provides an overview of the remarkable and enormous impact Section 5 of the Voting Rights Act (VRA) has had on the opportunity of minority citizens to participate in our Nation's political processes. Thus, this chapter provides insight into what has been lost as a result of the Supreme Court's decision in *Shelby County v. Holder*. This chapter also discusses *Shelby County's* effect on the Department of Justice (DOJ)'s federal observer authority under Section 8 of the VRA.

I. *SHELBY COUNTY* AND SECTION 5'S IMPACT ON MINORITY ELECTORAL OPPORTUNITY

The termination of Section 5 preclearance is having and will continue to have an immense impact on minority voting rights. As discussed in Chapter 1, Section 5 was focused on those states and localities with two defining characteristics: first, these jurisdictions had a long and pervasive history of voting discrimination; and second, these jurisdictions evidenced an ongoing pattern of voting discrimination after they became covered under Section 5. In other words, Section 5 was focused on the areas of the country where voting discrimination had been and continues to be most prevalent.

From 1965 until June 25, 2013 when *Shelby County* was handed down, Section 5 objections by DOJ and preclearance denials by the federal district court in Washington, D.C. prevented thousands of discriminatory voting changes from being implemented. Moreover, covered jurisdictions left other potentially discriminatory practices on the drawing board as a result of Section 5's deterrent effect. And the flow of Section 5 submissions to DOJ enabled DOJ, minority voters, and civil rights advocates to monitor in real time the status of voting practices in the areas where voting discrimination has most often occurred.

After *Shelby County*, Section 2 of the VRA remains as a nationwide prohibition on voting discrimination. While Section 2 provides important and considerable safeguards against discrimination, it does not provide the same level of protection that Section 5 afforded minority voters.

PHOTO CREDIT: SAMUEL WASHINGTON

Section 5 Preclearance Denials

By any measure, Section 5 was responsible for preventing a very large amount of voting discrimination. From 1965 to 2013, DOJ issued approximately 1,000 determination letters denying preclearance for over 3,000 voting changes.[1] This included objections to over 500 redistricting plans and nearly 800 election method changes (such as the adoption of at-large election systems and the addition of majority-vote and numbered-post requirements to existing at-large systems).[2] Much of this activity occurred between 1982 (when Congress enacted the penultimate reauthorization of Section 5) and 2006 (when the last reauthorization occurred); in that time period approximately 700 separate objections were interposed involving over 2,000 voting changes, including objections to approximately 400 redistricting plans and another 400 election method changes.[3]

Each objection, by itself, typically benefited thousands of minority voters, and many objections affected tens of thousands, hundreds of thousands, or even (for objections to statewide changes) millions of minority voters. It would have required an immense investment of public and private resources to have accomplished this through the filing of individual lawsuits.

The application of Section 5 to Texas is illustrative. When Section 5 coverage began in 1975, the Attorney General interposed objections (in December 1975 and January 1976) to several state laws, including one that would have required all registered voters in the State to re-register in order to continue to be eligible to vote and another that sought to redraw the districts for the State House of Representatives.[4] When Section 5 coverage was nearing its end, the federal court in Washington, D.C. issued decisions in August 2012 denying preclearance to Texas' photo identification (ID) requirement for in-person voting,[5] and the State's redistricting plans for Congress, the State House of Representatives, and the State Senate (finding that two of the plans were intentionally discriminatory and that the third showed signs of discriminatory intent).[6] In the years in between, DOJ interposed scores of objections to voting changes adopted by Texas and by its counties, cities, school districts, and special districts, particularly to discriminatory methods of election and redistricting plans.[7]

Section 5's Deterrent Effect: South Carolina's Photo ID Law and North Carolina's Voting Restrictions

Section 5's impact on minority electoral opportunity was not limited to the hundreds of preclearance denials: Section 5 also deterred the enactment of many other potentially discriminatory changes. South Carolina's adoption of a photo ID law in 2011, and the State's subsequent development of administrative rules for implementing that law, provides a good illustration of this preventative power.

Prior to 2011, South Carolina had a voter ID requirement for in-person voting but not a photo ID requirement. Voters were required to present either their voter registration card (automatically distributed to all registered voters) or a South Carolina driver's license or state ID card. The 2011 law (known as R54) deleted reference to the registration card as a polling place ID, and specified a limited set of photo IDs instead (a South Carolina driver's license or state ID card, passport, military ID, or a new photo registration card that could be obtained only by visiting a county office). The 2011 law also exempted voters from having to present photo ID if the voter had encountered a "reasonable impediment" to obtaining that ID.[8]

South Carolina sought preclearance from DOJ, and in December 2011 the Department objected.[9] DOJ explained in its determination letter that the data presented by the State indicated that African-American voters were significantly less likely than white voters to have the photo ID specified by the 2011 law, and that the law's "reasonable impediment" exemption did not mitigate the negative effects of changing to a photo ID requirement because it was unclear what the exemption covered.

South Carolina then sought preclearance from the federal court in Washington, D.C. After trial, the district court agreed that African-American voters were less likely to possess photo ID than white voters, and that voters would encounter significant burdens in attempting to obtain a photo ID.[10] However, South Carolina clarified and significantly expanded the scope of the "reasonable impediment" exemption while the litigation was ongoing. As a result, the district court found that the exemption would "permit voting by registered voters who have the non-photo voter registration card [used for voting under the pre-2011 law], so long as the voter states the reason for not having obtained a photo ID,"[11] which could be "any reason" that was not untrue.[12] Thus, the court concluded that "Act R54 will deny no voters the ability to vote and have their votes counted if they have the non-photo voter registration card…"[13]

Nikkey Finney, an award-winning American poet and South Carolina resident urged attendees to "Please get involved, don't be silent."

Based principally upon the State's inclusion of the "reasonable impediment" provision in the 2011 law and the State's subsequent interpretation of what it would allow, the district court precleared the 2011 law for elections held after 2012.[14] However, the court denied the State's request to preclear the law for use in the November 2012 election because the State did not have sufficient time to properly implement the "reasonable impediment" provision before the election, and thus mitigate the otherwise retrogressive effect of the law.[15]

U.S. District Judge Bates, joined by District Judge Kollar-Kotelly, wrote separately to underscore the central role Section 5 played in the process that led to the State seeking to implement a nondiscriminatory, rather than a discriminatory, photo ID law:

> **[O]ne cannot doubt the vital function that Section 5 of the Voting Rights Act has played here. Without the review process under the Voting Rights Act, South Carolina's voter photo ID law certainly would have been more restrictive. Several legislators have commented that they were seeking to structure a law that could be precleared… The key ameliorative provisions were added during that legislative process and were shaped by the need for pre-clearance. And the evolving interpretations of these key provisions of Act R54, particularly the reasonable impediment provision, subsequently presented to this Court were driven by South Carolina officials' efforts to satisfy the requirements of the Voting Rights Act…**
>
> **The Section 5 process here did not force South Carolina to jump through unnecessary hoops. Rather, the history of Act R54 demonstrates the continuing utility of Section 5 of the Voting Rights Act in deterring problematic, and hence encouraging nondiscriminatory, changes in state and local voting laws.[16]**

In contrast, the situation in North Carolina, discussed in more detail later in this chapter, illustrates what could occur now that Section 5 deterrence does not play a role in decision making. In 2013, as *Shelby County* was pending before the Supreme Court, the North Carolina General Assembly was considering a photo ID bill whose future was uncertain. After the *Shelby County* decision, the General Assembly immediately moved to enact not only a photo ID requirement but a host of other voting restrictions, including a reduction in early voting, a prohibition on same-day voter registration as part of early voting, a prohibition on pre-registration of 16 and 17 year olds, and a prohibition on counting ballots cast in the correct county but the wrong precinct.

Section 5 and Transparency

An important but less obvious aspect of Section 5 was that it provided a comprehensive, up-to-date inventory of voting changes in the covered jurisdictions. Each week, DOJ published a notice (available on its website) that listed all new Section 5 submissions, identifying the affected jurisdiction and the types of voting changes being submitted.

Accordingly, DOJ, citizens residing in the covered jurisdictions, and civil rights advocates could track the current status of election practices in these areas, make informed evaluations of what was happening, and then respond as appropriate. There is no other source for this

information since no other federal law requires states or localities to identify or report voting changes, and it does not appear that any state requires this either.

With the *Shelby County* decision and the loss of this information, it is now less likely that minority voters will learn of discriminatory voting changes before implementation is imminent or even underway. For example, if a polling place is moved or closed in a discriminatory manner, minority voters might not find this out until it is too late before an election to protest to election officials or challenge the change in court.

In testimony to the NCVR, Alabama State Senator Hank Sanders called Alabama's new photo ID law "the literacy test of the 21st century." Sanders noted that the law was enacted in 2011, but the state avoided seeking Section 5 preclearance because it expected DOJ would object. After *Shelby County*, photo ID is now being implemented in the State.

Changes Blocked by Section 5 that Now Are Being Implemented

Augusta-Richmond, Georgia

The consolidated city and county of Augusta-Richmond, Georgia is one location where a voting change blocked by Section 5 is now being implemented in the aftermath of *Shelby County*. In 2012, the Georgia General Assembly amended a statewide law so as to move the election date for Augusta-Richmond from November of even-numbered years to the date in even-numbered years when county primary elections are conducted. On December 21, 2012, DOJ interposed a Section 5 objection.[17]

DOJ determined that the change in the election date would have a retrogressive effect on minority voters and that the State had not carried its burden of showing the absence of a discriminatory purpose. With regard to effect, the Department reviewed turnout data for Augusta-Richmond for county primary elections and November elections, and found that while both African Americans and whites turned out at a lower rate on the primary date, the drop-off for African-American voters had been substantially larger. With regard to purpose, the Department found that the reasons offered for the change were pretextual and that Augusta-Richmond's governing board had actually opposed the change. DOJ further noted that it had previously interposed a Section 5 objection to a similar election-date change for Augusta-Richmond.[17a] DOJ also found it particularly significant that African Americans constitute a slight majority of the jurisdiction's voting age population and thus, in the context of racially polarized voting, "electoral outcomes are particularly dependent on voter turnout."[18]

In 2014, with Section 5 no longer in effect, the Augusta-Richmond government prepared to hold its election on the county primary date. African-American residents sued claiming that *Shelby County* only applied prospectively, and that Section 5 therefore continued to prevent the date change from being implemented.[18a] A federal district court disagreed,[19] and the election was held on the county primary date.[20] African-American candidates did quite well in the first election, allaying immediate concerns about the effect of this change. However, time will tell whether future elections are more in line with the historical voter turnout patterns. More generally, the federal court's decision appears to have removed any lingering doubt about the retroactive applicability of the *Shelby County* decision to post-2006 preclearance denials.

Beaumont Independent School District, Texas

Another such example involves the Beaumont Independent School District (ISD) in Texas. The events involving the ISD also illustrate how advances made in recent years may now be reversed after *Shelby County*.

In 1985, a federal court in a school district desegregation case ordered the ISD to change from a system of five districts and two at-large seats ("5–2") to a system of seven single-member districts. In 2011, however, the ISD held an initiative election in which voters authorized the ISD to return to the 5–2 system. The change back to 5–2 was submitted for preclearance and, on December 21, 2012, DOJ interposed a Section 5 objection to the change.[21]

In its objection letter, the Department explained that a 5-2 system would lead to a retrogression in African-American electoral opportunity. Under the pre-existing system of seven districts, African Africans had the opportunity (in the context of racially polarized voting in ISD elections) to elect a majority of the board members; under the 5-2 system, DOJ's analysis showed that minority voters would have the opportunity to elect only three of the seven board members (African Americans would likely have an electoral opportunity in three of the new five districts but not in elections for the at-large seats).[21a] DOJ also found "overwhelming evidence that both the campaign leading to the [2011 initiative] election as well as the issue itself carried racial overtones with the genesis of the change and virtually all of its support coming from white residents."[22]

With the demise of Section 5, the ISD is once again planning to implement the 5-2 system. The 5-2 system is being challenged in a Section 2 lawsuit.[23]

Texas photo ID requirement

Litigation regarding Texas' photo ID law is discussed in detail in Chapter 6. This requirement was enacted in 2011, but because Section 5 preclearance was denied (first by DOJ and then

by the court in Washington, D.C.) it was not implemented in the 2012 elections. After *Shelby County*, Texas has begun implementation while Section 2 lawsuits challenging the law are moving forward.

Why Section 2 Does Not Adequately Compensate for Section 5's loss

After *Shelby County*, case-by-case litigation is now the only tool for challenging discriminatory voting changes. Section 2 is the principal federal law that may be used for this purpose, although litigation also may be brought under Sections 4(e) and 203 of the VRA to challenge language-assistance restrictions.

As discussed in Chapter 1, Congress determined in 1965 that case-by-case litigation is inadequate to address ongoing voting discrimination in the areas of the country where this discrimination has been most prevalent, i.e., the areas identified by the Section 4 coverage formula. In 2006, Congress again considered this question and, in deciding that Section 5 is still needed, reaffirmed that case-by-case litigation is "ineffective to protect the rights of minority voters" in the specially covered areas.[24]

While Section 2 does offer a potentially powerful remedy, there are a number of significant difficulties inherent to it, and Section 2 clearly does not afford the same level of protection to minority voters that Section 5 did. To paraphrase Chief Justice Warren's observation in *South Carolina v. Katzenbach* (quoted in Chapter 1), the *Shelby County* decision has essentially shifted the advantage of time and inertia back to the perpetrators of voting discrimination.

Voting Rights Attorney Robert Rubin testified about the impact of the loss of Section 5 at the California NCVR hearing. "Without Section 5," stated Rubin, "it would be extremely difficult to challenge discriminatory voting changes before these go into effect." PHOTO CREDIT: ANDRIA LO

A key distinction between the Section 2 and Section 5 remedies is the nature of the review process. Preclearance reviews were essentially automatic (since jurisdictions were required to submit all voting changes, and generally had become accustomed to doing so by the time *Shelby County* was decided). In addition, preclearance was largely handled by DOJ through an administrative process that did not involve litigation. In order to bring a Section 2 challenge, on the other hand, the minority community or DOJ must first become aware of the voting practice in question. The purpose and effect of the change must then be investigated and analyzed, and minority plaintiffs or DOJ must have the resources needed to pursue litigation.

Section 2 litigation is often complex and can be slow, time-consuming, and expensive. For example, as noted by the D.C. Circuit when it decided *Shelby County*, the legislative history for the 2006 reauthorization included "a Federal Judicial Center study finding that voting rights cases require nearly four times more work than an average district court case and rank as the fifth most work-intensive of the sixty-three types of cases analyzed."[25] That court also noted that Congress heard testimony "from witnesses who explained that 'it is incredibly difficult for minority voters to pull together the resources needed' to pursue a section 2 lawsuit, particularly at the local level and in rural communities."[26]

A second important distinction between Sections 2 and 5 is that the covered jurisdictions had the burden of proof in Section 5 preclearance reviews whereas minority plaintiffs and DOJ have the burden of proof in Section 2 cases. It is generally understood that the party bearing the burden of proof faces a higher level of difficulty in prevailing.

Third, Section 5 required pre-implementation review of voting changes but, when a Section 2 case is filed, the jurisdiction is free to implement the disputed voting change while the litigation is ongoing, unless plaintiffs are able to obtain a preliminary injunction. Thus (as noted above), Texas has enforced its photo ID requirement in several elections in 2013 and 2014 although the requirement is being litigated under Section 2. Texas did not implement the requirement before *Shelby County* because preclearance had not been granted.

Obtaining a preliminary injunction in a Section 2 case is burdensome, challenging, and uncertain, even in the most meritorious cases. Moving for such relief requires plaintiffs to bear the expense of litigation, and to delay requesting relief until the evidence is sufficiently developed. In addition, in order to obtain a preliminary injunction, plaintiffs often must demonstrate that they have a substantial likelihood of prevailing at trial, and even with that, they must also satisfy several other conditions in order for an injunction to be granted.[27] Furthermore, obtaining preliminary relief may require plaintiffs to overcome a judge's disinclination to grant an injunction before the court has been able to evaluate all the relevant information at trial.[28] The reluctance of federal courts to delay a scheduled election or order an interim remedy into place via

a preliminary injunction is particularly impactful as that is the only realistic way to stop some changes (such as redistricting) where the pre-existing practice can no longer be used.

The Section 2 suit that was litigated against Charleston County, South Carolina's at-large election system illustrates the difficulty of obtaining preliminary relief in a voting case. After filing suit in January 2001, DOJ moved for a preliminary injunction in advance of the June 2002 primary for the County Council, and the district court denied the request.[29] DOJ then moved for partial summary judgment, and in July 2002 the court found that the Department had proven all three of the *Gingles* preconditions for demonstrating a Section 2 violation;[30] the court thus concluded that the central elements of a Section 2 violation were present, and this indicated that it was highly likely the Department would prevail at trial. Yet, when DOJ moved again for a preliminary injunction in advance of the November 2002 general election, the court again refused to grant relief.[31] In 2003, the district court ruled in favor of DOJ after trial,[32] and in 2004 the Fourth Circuit Court of Appeals affirmed that ruling.[33]

This Charleston County example also highlights how Section 2 and Section 5 differ. In 2003, after the district court's ruling that the County Council's at-large system violated Section 2, the county school district adopted the same at-large method. DOJ initially responded by requesting additional information, and then interposed a Section 5 objection less than nine months after the initial submission. Thus, this change was blocked by Section 5 before it could be implemented and without years of costly litigation.[34]

Lastly, the Section 5 "effect" standard was specifically aimed at preventing backsliding (retrogression), whereas the results standard employed by Section 2 focuses on equal electoral opportunity. The Section 2 standard is broader in one sense, in that it allows plaintiffs to challenge practices that are discriminatory but not retrogressive. On the other hand, the results standard may require a more complex analysis to stop retrogressive changes than did the relatively straightforward Section 5 standard.

II. *SHELBY COUNTY* AND THE FEDERAL OBSERVER PROGRAM

Since 1965, federal observers have played a key role in voting rights enforcement. As discussed in Chapter 6, the presence of federal observers may deter misconduct by election officials and others at the polls. Furthermore, if problems do arise on Election Day when observers are present, the observers are required to promptly inform DOJ of what is happening so that DOJ can immediately contact the responsible election officials to attempt to remedy the situation. In addition, if problems identified by observers are not resolved and

are significant and ongoing, the post-election written reports provided by the observers can provide the basis for DOJ litigation.

As discussed in Chapter 1, DOJ's principal authority for sending observers was provided by Section 8, which authorizes observers in areas covered under Section 4, but DOJ's continuing ability to rely upon that section is in doubt because of *Shelby County*. The Department has not sent observers to any of the Section 4 areas since the Supreme Court's decision and DOJ apparently has concluded that the decision effectively has terminated the Section 8 observer program.

After *Shelby County*, DOJ still has the authority to send observers to jurisdictions designated by federal courts that made use of the Section 3(a) remedy in voting rights litigation (where those remedies have not expired). The Section 3(a) designations have been ordered in lawsuits brought by DOJ to enforce the VRA's language assistance requirements.

Case Spotlight
North Carolina 2013: The Post-*Shelby* World in a Microcosm

2000 - 2010, North Carolina is a Leader in Increasing Voter Participation: Reforms enacted in North Carolina led to increasing voter participation rates in North Carolina, making the state a model for the country in creating a voting system that brought new voters into the process. For example, in 2001 the state implemented early voting[35] followed by the implementation of same-day voter registration in 2007.[36] In 2009, the legislature passed a bill that allowed for pre-registration of 16 and 17 year-olds with overwhelming bi-partisan support.[37]

During this time, the voter participation percentage in North Carolina increased steadily from 54.2 percent in the 2000 presidential election to 60.4 percent in the 2004 presidential election.[38] The state witnessed another increase in voter participation in the 2008 presidential election when the rate increased to 69.6 percent. Although the voter participation decreased slightly during the 2012 presidential election (68.3 percent) the voter participation rate of African Americans in North Carolina was the highest of any state at 70.2 percent.[39]

And Then Shelby County Came Down…: The decision in *Shelby County v. Holder* in 2013 opened the door for a new legislature to completely reverse course, passing a bill that eliminated much of the voting rights progress made over the prior decade.[40] The process behind the turnaround and the passage of the most comprehensively restrictive law in the country makes North Carolina the perfect case study for what the *Shelby* decision means.

Before *Shelby County,* only a voter identification bill was being contemplated in North Carolina, and, Speaker Thom Tillis assured voters that the process of drafting would be a "deliberative, responsible and interactive approach" and "slow walk…through the House."[41] Additionally, House Elections Committee Chairman David Lewis called for open negotiations in the legislative process for a stand-alone voter ID bill. The original H.B. 589 was indeed filed as a stand-alone voter ID bill that allowed for a wide range of acceptable identification, including student and employee IDs.[42] It was introduced on April 4, 2013 and passed the House on April 24, 2013. At that point, the 16 page bill was moved from the North Carolina State House to the North Carolina Senate.

However, no action would be taken for months—in fact, until one month after the decision in *Shelby County*. The reason for the delay was no secret: according to Senator Tom Apodaca, Chair of the Senate Elections Committee, the Senate did not want "the legal headaches of having to go through pre-clearance [under the Voting Rights Act] if it wasn't necessary and having to determine which portions of the proposal would be subject to federal scrutiny."[43]

Accordingly, on July 23, 2013, two days before the end of the legislative session, the Senate revealed a new, heavily amended H.B. 589. The bill had evolved from a stand-alone voter ID

bill to an omnibus bill, packed with multiple voting restrictions. The Senate version, now 56 pages long, reduced early voting by one week, eliminated Sunday voting, eliminated same day registration, prohibited the counting of out-of-precinct provisional ballots and eliminated pre-registration for 16-17 year olds.[44] Additionally, the new bill limited the forms of acceptable photo ID to (1) a North Carolina driver's license; (2) a special (non-operator's) ID issued by the North Carolina DMV; (3) a U.S. passport; (4) military ID; (5) veteran's ID; (6) a tribal ID (from a federally or state-recognized tribe); and (7) a driver's license or non-operator ID issued by another state but only if the voter had registered within 90 days of the election.[45]

During hastily held hearings in the Senate, opponents of the bill both testified and produced evidence that the restrictive changes would have a damaging effect on African American voters. Despite the concerns raised by legislators opposed to the new omnibus bill, the new H.B. 589 passed the Senate and the House without a single supporting vote from an African American legislator.[46] It was signed into law by Governor McCrory on August 12, 2013.[47]

The Upshot: Without Section 5 in its way, the North Carolina legislature was able to pass measures that clearly threatened, and indeed were likely designed, to reverse a historic rise in voter engagement in one fell swoop, without having to provide any justification for the measures or any meaningful review. The new law is now being challenged in Section 2 litigation, and may not be fully addressed until after the 2014 election.

PHOTO CREDIT: ERIC PRESTON

"As elections administrator for Guilford County for 25 years, I never found a compelling public interest that justified the voter ID requirements of House Bill 589 nor any of the other rollbacks of voting opportunities that had been granted voters during the past 20 years..."

–Testimony from George Gilbert, economist and former director of elections for Guilford County, NC at the NCVR North Carolina hearing

Without Section 5 in its way, the North Carolina legislature was able to pass measures that clearly threatened, and indeed were likely designed, to reverse a historic rise in voter engagement in one fell swoop, without having to provide any justification for the measures or any meaningful review. The new law is now being challenged in Section 2 litigation, and may not be fully addressed until after the 2014 election.


Lori Shellenberger

CHAPTER 4
Impact of Discrimination on Protected Groups

African Americans, Latinos, Native Americans, and Asian Americans are the four groups that Congress primarily (though not exclusively) has sought to protect in the Voting Rights Act (VRA).[1] In 1965, Congress made extensive findings regarding how tests and devices, such as literacy tests and other laws and procedures, had been used to discriminate against African Americans. In 1975, Congress expanded the Voting Rights Act to cover language minorities, in particular Latino, Native-American, and Asian-American voting age citizens because of discrimination they had faced.[2] Included was the determination that the use of English-only elections in jurisdictions where more than 5 percent of the voting age citizens were of a single language minority constituted a test or device because it effectively excluded those citizens from participating in the electoral process.

As detailed below, voting discrimination affecting African Americans, Latinos, Native Americans, and Asian Americans is long-standing and persistent, has taken many forms, and continues today. There is a serious concern that the remaining legal remedies after the *Shelby County v. Holder* decision will not be adequate to deter new discriminatory voting laws and practices from being enacted and implemented.

I. AFRICAN AMERICANS

Since the Civil War, African Americans have been targeted through discriminatory laws and practices that have resulted in exclusion from the democratic process. Particularly in Southern states, the response to African-American political participation has often been the implementation of new mechanisms for disenfranchisement. This legacy of voting discrimination, like discrimination against African Americans in social and economic arenas, poses an ongoing threat to African-American inclusion in the political process. Though protection under the Voting Rights Act has produced significant gains, African Americans are continually subjected to new threats to their full enfranchisement. The ongoing protection of the Voting Rights Act is vital to the inclusion of this community.

LEFT: Aida Macedo, former Field Manager for the Election Protection Legal Committee, testified at the NCVR hearing in San Francisco about voter intimidation of Latino voters at the polls in Orange Cove, CA in 2012.
PHOTO CREDIT: ANDRIA LO

History and Background

The passage of the VRA is often referred to as the Second Reconstruction. The first Reconstruction, as referenced in Chapter 1, followed the Civil War; in the second, the civil rights movement confronted and fought a system of Jim Crow laws that permeated the country, particularly in the South.

As noted in the 2006 National Commission on the Voting Rights Act report,[3]

> **Following the Civil War, passage of the Fourteenth and Fifteenth Amendments gave to black males a constitutional right to vote and take part in the civic life of the nation, and they took full advantage of that right during the Reconstruction period. Large numbers of African Americans were elected in the early years of the First Reconstruction, when they composed 15 percent of all southern officeholders. However, following the Compromise of 1877, the Republicans agreed to refrain from using federal troops to protect black voting rights in the South, and white Democrats in that region embarked on a generation-long effort both to disfranchise blacks and remove them from office … In addition to violence and fraud, all manner of legal devices were used to keep blacks, as well as various other minorities, from casting a ballot, including the poll tax, the literacy test, the grandfather clause, the good-character test, the understanding test, and the white primary.[4]**

For nearly 100 years, Southern states used the law and force to continually and systematically exclude African-American citizens from registering and voting on a massive scale.[5] In 1890, Mississippi held the first constitutional convention for the purpose of altering the state's suffrage laws to remove blacks from political life. These new provisions included a sharp increase in the duration of residency requirements, the adoption of a poll tax, and the imposition of a literary test.[6] Other Southern states followed suit and began a series of state constitutional or statutory changes that instituted, in varying forms and combinations, poll taxes, literacy tests, secret ballot laws, lengthy residency requirements, complex voter registration systems, multiple voting-box arrangements, and white-only primaries. These practices systematically intimidated and precluded African Americans in the South from voting and registering to vote. During this period, literacy tests continued to be used in six of the 11 ex-Confederate states. Louisiana blocked African-American voters arbitrarily deemed to have "bad character" from voting, and African-American voters in Alabama were barred from voting unless a white citizen would "vouch" for them.[7]

The mass exclusionary tactics employed in the South during the post-Reconstruction era were successful in blocking African Americans from registering and voting. In Mississippi, African-American voter turnout, which had exceeded 70 percent in the 1870s, dropped to 15 percent by the early 20th century. While more than 130,000 African Americans were registered to vote in Louisiana in 1896, that number dropped to 1,342 by 1904.[8] State actors devised obstacle after obstacle aimed at preventing political participation by African Americans. Legal victories eliminated one practice, and another would pop up in its place to achieve the same result of exclusion.[9] For example, in 1927, 1944, and 1953, the Supreme Court struck down three different versions of the "white primary" in Texas "because it kept reappearing in slightly modified form after each ruling."[10] Unable to keep up with the pace of tactics used by Southern states to curb registration and turnout, federal intervention and private litigation proved ineffective. The VRA was enacted to confront this long-standing, persistent, and all-encompassing voting discrimination against African Americans.

Following the passage of the VRA, African-American voter registration and turnout increased significantly. It is estimated that more than one million new African-American voters were registered between 1964 and 1972.[11] In the seven covered or partially covered Southern states, African-American registration increased from 29.3 percent to 56.6 percent between the enactment of the VRA in August 1965 and January 1972.[12] In Mississippi alone, African-American voter registration rates rose from 6.7 percent to 59.8 percent.[13] In fact, this increase was relatively immediate, a testament both to the much-needed protections provided by the VRA and the devastating effects of prior disenfranchisement. The U.S. Commission on Civil Rights found that, by 1968, African-American voter registration was over 50 percent in several Southern states; prior to the passage of the Act, only Florida, Tennessee, and Texas recorded African-American registration at those levels.[14]

Wade Henderson, Executive Director of the Leadership Conference on Civil and Human Rights and guest commissioner, received testimony at the NCVR Ohio regional hearing. PHOTO CREDIT: JIMMY MCEACHERN

Yet, the large successes of the Voting Rights Act of 1965 in protecting the right to register and vote prompted officials to continue targeting African American voting strength through

dilutive tactics. At-large elections were seen as an especially effective way to prevent African-American candidates from getting elected, as were municipal annexations of predominantly white suburbs, and reapportionment and redistricting statutes.[15] A landmark decision by the Supreme Court in *Allen v. State Board of Elections* held that these and other electoral modifications were subject to preclearance under Section 5 of the Act.[16]

Still, Section 5 alone was not sufficient to eliminate certain discriminatory voting mechanisms in the South during the 1970s. Some jurisdictions implementing these tactics remained uncovered, and even in covered jurisdictions citizens were unable to challenge long-standing dilutive practices unless and until changes were proposed.[17] In addition, jurisdictions that passed laws diluting the African-American vote often were noncompliant and did not submit these changes to the United States Department of Justice (DOJ) or the district court for preclearance, as required by the VRA.[18] Many such discriminatory practices were thus implemented and left unchallenged in the Southern states.

As jurisdictions adopted a range of ingenious dilutive tactics, Congress recognized that the VRA needed to be extended and strengthened. As a result of the 1982 adoption of the results standard under Section 2, voting rights litigation changed dramatically nationwide. Section 2 has since been widely used as a means to combat racial vote dilution and has been critically important for the success of minority candidates at the local level.[19] The 1980s saw an explosion in the number of these cases.[20] "The number of Section 2 cases filed between 1982 and 1989 dwarfed the number of constitutional challenges brought during the 1970s," with one study finding "over 150 Section 2 challenges to municipal elections in the eight states that were covered by Section 5 during this time period alone.[21] Moreover, municipal data from these states" show that "[n]early 65 percent of all changes from at-large elections were attributable to litigation or settlements resulting from litigation."[22]

In some instances, officials made little effort to disguise their efforts to adopt racially discriminatory districting schemes despite the existence of Section 2. Governor Dave Treen of Louisiana proposed three districting schemes that would have left Orleans Parish, which was 55 percent African American by 1980, without a single majority African-American congressional district.[23]

It was not until after a federal court rejected Treen's proposal and a new redistricting plan was adopted that Louisiana was able to elect its first African-American congressional representative since Reconstruction.[24]

Still, the adoption of the Section 2 results standard did not stop states from creating and attempting to create racially discriminatory election structures.[25] In fact, the number of Section 5 objections increased after 1982 in spite of improved registration and turnout numbers and successful litigation.[26] In Mississippi alone, the DOJ lodged 37 objections just

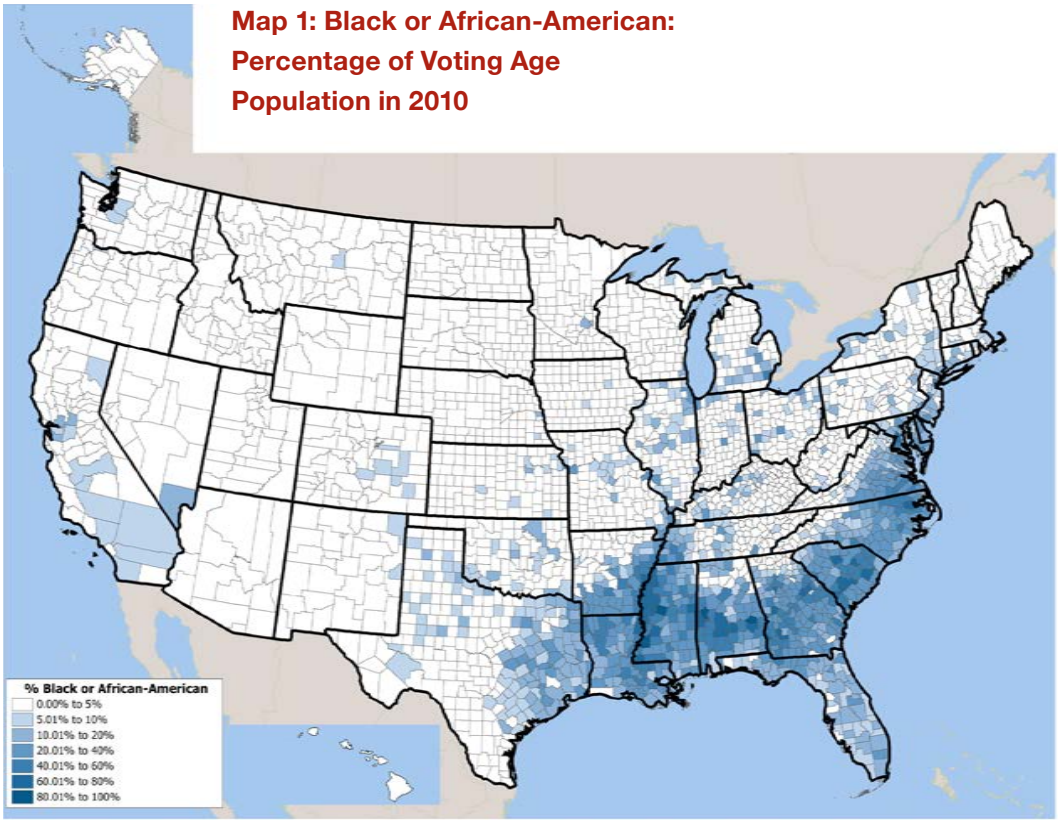
to county redistricting plans following the 1980 census.[27] In particular, jurisdictions in some circumstances attempted to re-implement discriminatory tactics previously used to dilute the African-American vote, even where those tactics had been previously successfully challenged.[28] For example, in Lancaster County, South Carolina, the General Assembly adopted staggered terms for at-large seats on the local area school boards in 1972 and again in 1976 and 1984 following the DOJ's initial objection.[29] Based on the evidence it received, the 2006 U.S. House Judiciary Committee report concluded that "[t]he changes sought by covered jurisdictions were calculated decisions to keep minority voters from fully participating in the political process."[30]

Alabama, a state historically and continually at the center of the battle for racial equality in voting rights, is an example of how litigation dismantled policies that intentionally discriminated against African-American voters. A series of cases brought in the 1980s aided in breaking apart some of Alabama's most overt racially discriminatory electoral schemes. In a seminal 1986 case, African-American plaintiffs challenged the use of at-large elections for commissioners in nine counties in *Dillard v. Crenshaw County.*[31] The court relied on evidence that 1951 and 1961 statewide electoral changes, both of which utilized vote dilution tactics, were adopted by the Alabama legislature with a discriminatory intent.[32] Among other probative evidence, expert testimony was presented "that a third of the state's counties shifted from district to at-large elections between 1947 and 1971, after blacks began to register and vote in large numbers."[33] Based on the court's finding of a statewide policy of intentional discrimination, the federal district court enjoined the use of at-large elections in these counties.[34] This ruling propelled subsequent litigation challenging dilutive practices that resulted in more than 100 Alabama jurisdictions changing their method of election.[35] African-American plaintiffs in Alabama also challenged the discriminatory appointment of poll workers under Section 2 of the VRA. The district court first granted preliminary relief against almost every county, prohibiting further enforcement or implementation of the widespread practice of appointing "disproportionately too few"[36] African-American poll workers. The court later found that the dearth of African-American poll workers was the product of intentional discrimination by the state.[37]

Despite these successful challenges to discriminatory voting laws over the past 50 years, recently there has been a resurgence in barriers to African-American voter participation through such measures as voter identification laws as well continued vote dilution. Discrimination against African Americans did not end with the passage of the VRA, and as has been and as will be detailed throughout this Report, continues to plague the American voting system today.

Geography

Map 1: Black or African-American: Percentage of Voting Age Population in 2010



As shown in Map 1, the African-American population is still heavily concentrated in the South, as well as big cities in other parts of the country. The most recent census found that 14 percent of all people in the United States identified as black, with 55 percent of the black population living in the South. One-hundred five Southern counties had a black population of 50 percent or higher.[38]

Participation

As can be seen in the graphs in Appendix C, registration and turnout among African Americans has been improving in recent years, according to the U.S. Census Bureau. In the last two presidential elections that brought President Barack Obama into office, African-American voter registration and turnout rates increased. In 2012 and 2008, African-American turnout levels among citizens of voting age were at approximately 66 and 65 percent, respectively, which represents a steady increase in turnout from previous years (compared with 60, 57, and 53 percent in 2004, 2000, and 1996, respectively).[39] However, this has not been the case in other types of elections. In the last two midterm elections, for example, African-American participation rates continued to fall below that of whites. In 2010 and 2006, the

negative differentials between African-American and white participation rates were 5 and 11 percentage points, respectively.[40]

Elected Officials

Section 2 and Section 5 of the VRA were highly effective working in tandem to reduce minority vote dilution, including through the districting process.[41] As a result, in jurisdictions where the African-American population is sufficiently concentrated, African-American candidates can regularly gain elected office. Between 1970 and 2000, the nation saw a 600 percent gain in the number of African-American elected officials nationally and a 1,000 percent gain in those states that were formerly entirely covered by Section 5.[42] Nonetheless, getting elected in areas without a majority of minority voters continues to be a challenge for African-American candidates. As several voting rights experts recently concluded, "Although there is evidence to suggest that minority candidates are beginning to win elections in some non-minority districts, the overwhelming number of minority legislators continue to represent majority-minority districts."[43]

Current Types of Discrimination

Several types of election procedures have been used to discriminate against African-American citizens, including vote dilution, barriers to voting, and even attempts at intimidation, and these procedures continue to be used to disempower African Americans. As is demonstrated by the tables outlining the cases litigated under the Voting Rights Act since 1995 (see Supplemental Online Appendix), there have been numerous cases striking down redistricting plans, at-large elections, and other election practices that were found to discriminate against African Americans. Over 1/3 of the successful Section 2 cases[44] brought from January 1995 to June 2014 involved African-American voters.[45] These cases continue to be largely concentrated in the Southern United States. About 2/3 of the cases involving African Americans occurred in jurisdictions in the former Section 5-covered jurisdictions, with Mississippi, Louisiana, and Georgia alone accounting for 42 percent of these cases.[46] Additionally, the overwhelming majority of Section 5 and Section 3(c) preclearance denials, where the Justice Department or federal court refused to preclear election changes, issued between January 1995 and June 2014 were for changes impacting African Americans. Of the 113 Section 5 preclearance denials issued during this period, 101—or nearly 90 percent of the denials—involved circumstances where the submitting jurisdictions failed to prove the proposed change would not discriminate against African Americans.[47]

Dr. Brenda Williams of The Family Unit testified at the NCVR South Carolina state hearing, stating "[T]he South Carolina Election Commission now has a dress code for people wanting and needing photo IDs in the State. […] You have to wear a certain kind of attire. No hats are allowed, no scarves. African-American women oftentimes adorn ourselves in scarves and turbans. It's a part of our culture. […] [T]he voter registration office people have the authority to stop and not take your picture if you don't fit their attire guidelines."

At-large elections and discriminatory redistricting plans have been the primary tactics most recently employed to dilute African-American voting strength. Of the 62 successful Section 2 cases involving African Americans, almost 1/2 involved at-large methods of election and 1/3 involved redistricting plans.[48] Additionally, as is discussed in Chapter 6, evidence indicates that increasingly stringent voter identification requirements, restrictions on voter registration drives, and reductions in early voting opportunities disproportionately affect African Americans compared to whites.[49] The cases and research discussed in depth in the following chapters will demonstrate the panoply of ways African Americans are denied their full and equal voting rights in the 21st century.

II. LATINOS

Latinos comprise approximately 17 percent of the U.S. population[50] and are the nation's largest minority group.[51] As explained below, however, voter participation rates for Latinos—despite recent increases—continue to lag behind those of other groups. A leading Latino organization points out that "[m]ore than 100 years of virtually unchecked discrimination at the polls against Latino U.S. citizens gave birth to this situation, and a number of factors have sustained it."[52]

As detailed below, Latinos have historically faced discrimination in voting. This discrimination has come through formal and informal methods such as state-sanctioned violence and intimidation, racially targeted voter challenges, and English-only elections. Other persistent forms of discrimination include discrimination in the redistricting process, the use of at-large elections to dilute the Latino vote, and the failure to comply with the VRA's language assistance requirements to ensure equal access for Spanish-speaking voters, among others.

History and Background

The history of Latinos in the United States, like the group itself, is quite diverse.[53] It is not an overgeneralization, however, to say that Latinos, as a whole, have faced a history of discrimination and exclusion in the United States, some of which continues to the present day and has contributed to the existing disparities in electoral participation and opportunity.

Mexican Americans and Puerto Ricans are the two largest Latino heritage[54] groups and those with the longest history in the United States. Mexican Americans were present in what is now the Southwest of the United States even prior the U.S. border expansion to include this territory in the 1840s. With the 1845 annexation of Texas and the 1848 Treaty of Guadalupe Hidalgo, a great part of Northern Mexico became part of the United States, and the Mexican citizens living in that territory became U.S. citizens.[55] Similarly, the United States acquired control of Puerto Rico in 1898,[56] and Puerto Ricans were granted U.S. citizenship in 1917, after which hundreds of thousands of Puerto Ricans migrated to the continental United States.[57] Despite these formal grants of citizenship, however, both Puerto Ricans and Mexican Americans experienced acts of discrimination and obstacles to their full integration as equal citizens of the United States. Other Latino heritage groups with a more recent history in the United States have similarly faced barriers to equality under the law.

Mexican Americans throughout the Southwest have been the target of discrimination including unlawful deportations,[58] state-sanctioned violence,[59] segregation in schooling,[60] and exclusion from juries.[61] In the watershed case of *Hernandez v. Texas* in 1954, the first in which the Supreme Court recognized that Mexican Americans were entitled to equal protection under the Fourteenth Amendment,[62] Hernandez challenged a Jim Crow practice in Texas that denied Mexican Americans the opportunity to serve on trial or grand juries.[63] The Supreme Court recognized that Hernandez proved that persons of Mexican descent constituted a separate class, stating:

> **The participation of persons of Mexican descent in business and community groups was shown to be slight. Until very recent times, children of Mexican descent were required to attend a segregated school for the first four grades. At least one restaurant in town prominently displayed a sign announcing 'No Mexicans Served.' On the courthouse grounds at the time of the hearing, there were two men's toilets, one unmarked, and the other marked 'Colored Men' and 'Hombres Aqui' ('Men Here').[64]**

Early Discrimination in Voting

This widespread discrimination against Mexican Americans also manifested itself in the electoral process. The Texas Rangers, for example, who utilized their position as law enforcement agents to terrorize the Mexican American community through "lynchings, burning houses, executions in front of family members and murder," also specifically discouraged Mexican Americans from voting.[65] Texas further excluded Mexican Americans through its white primaries, lauded for "eliminat[ing] the Mexican voter as a factor in nominating county candidates," and the imposition of a poll tax.[66]

Literacy tests were another tool used throughout the Southwest and in New York to block the Latino vote.[67] New York, for example, instituted its English literacy test in 1922,[68] just five years after Puerto Ricans were granted citizenship and New York City experienced an influx of Puerto Ricans.[69] Later, in the 1920s, 1930s, and 1940s as Latino populations rose in the Southwest, Latino voters were the target of further intimidation efforts to keep them away from the polls.[70] Operation Eagle Eye, for example, deployed volunteers in Arizona to "question[] would-be Latino voters about their residence and ability to read and understand English."[71]

Continued Discrimination into the Second Half of the 20th Century

Although, as mentioned, the VRA was originally designed with African Americans' voting rights in mind, the 1965 Act included an important provision for some Latinos: Section 4(e). Section 4(e) provides that the right to vote cannot be denied to U.S. citizens who completed the sixth grade in an American public school where instruction was conducted primarily in a language other than English.[72] The provision was instrumental to the protection of Puerto Rican voting rights in that it invalidated the English literacy tests that had been implemented to block Puerto Ricans' access to the polls.[73] This protection, however, was resisted by New York State, which challenged it all the way to the Supreme Court. In *Katzenbach v. Morgan*,[74] the Supreme Court rejected the challenge, holding that Section 4(e) was constitutional. Eventually, Section 4(e) was to pave the way for more expansive provisions protecting language minority voters.

In the hearings leading up to the reauthorization of the Voting Rights Act in 1975 and 1982, witnesses testified that the discrimination methods used against African Americans in the South were similarly being used against Latinos in the Southwest.[75] Some of these methods

included "intimidation, capricious changes in voting rules, English-language registration and voting requirements, lengthy residential requirements, and the manipulation of the Mexican American vote by non-Mexican American political leaders."[76] After finding that voting discrimination against citizens with limited English proficiency was "pervasive and national in scope," Congress in 1975 expanded the protections of the VRA to specific language minorities, including those with Spanish heritage.[77] In doing so, it sought to address a "racialized inequity that was purposefully directed at [Mexican-American voters] that turned on their racial/ethnic characteristics and not only on their language minority status."[78] Importantly, Congress found that English-only elections in jurisdictions where more than 5 percent of the voting age citizens were a minority language group constituted a "test or device" under the Voting Rights Act, and hence were prohibited.[79]

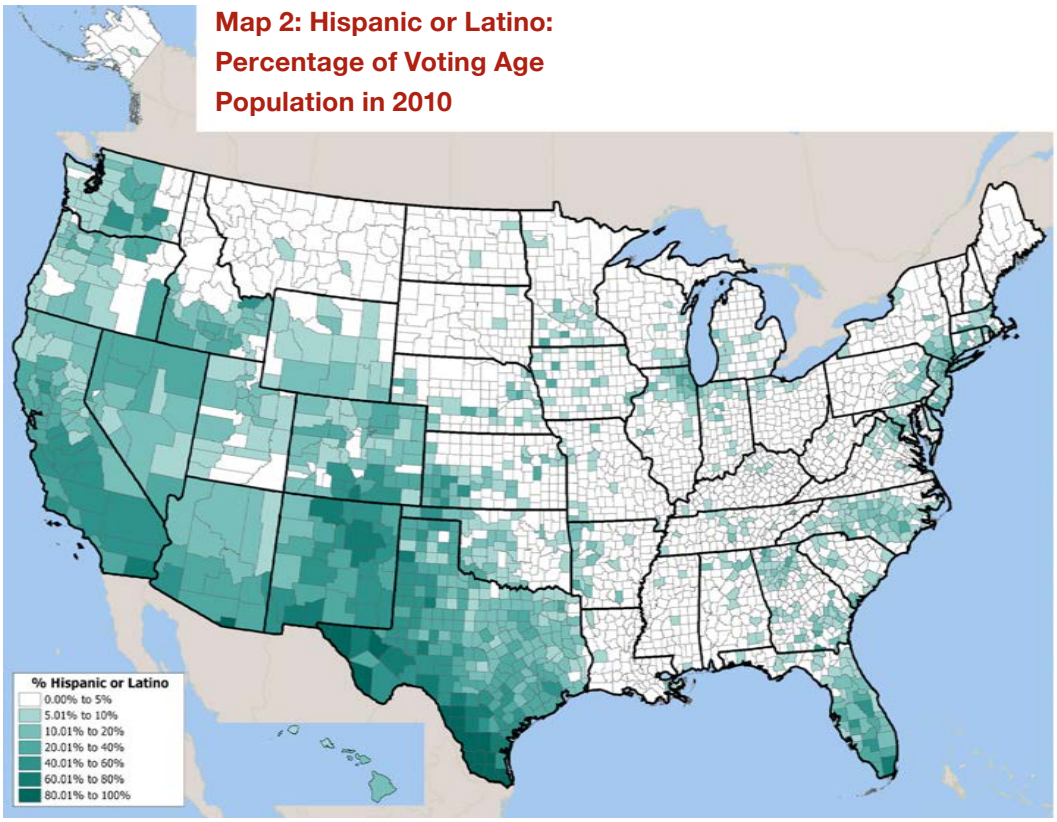
In recent decades, Latinos have also experienced discrimination in the redistricting process. In *White v. Regester*, for example, the Supreme Court struck down a redistricting plans for the Texas State House of Representatives.[79a] In invalidating the plan, the district court noted that in Bexar County, "cultural incompatibility… conjoined with the poll tax and the most restrictive voter registration procedures in the nation ha[d] operated to effectively deny Mexican-Americans access to the political processes in Texas even longer than the Blacks were formally denied access by the white primary."[80]

George Korbel, Attorney with the League of United Latin American Citizens, holding up two models of Texas gerrymandered House districts while testifying about what he called "the vast arc of exclusion" in the State.
PHOTO CREDIT: SAMUEL WASHINGTON

Similarly, in a 1990 decision in the case of *Garza v. County of Los Angeles*, a federal judge declared that, when drawing the district lines after the 1980 census, the Los Angeles County Board of Supervisors had intentionally violated the rights of Latino citizens, in violation of Section 2 of the Voting Rights Act and the Fourteenth Amendment, by intentionally dividing a geographically compact area of Latinos for several rounds of redistricting after a Latino candidate almost won election in 1958.[81] To remedy this violation, the court ordered the district to redraw its district lines,[82] resulting in the creation of a majority-Latino district that resulted in the election of Gloria Molina, the first Latino Los Angeles county supervisor in modern history.

Geography

Map 2: Hispanic or Latino: Percentage of Voting Age Population in 2010



As can be seen from Map 2, there continue to be significant concentrations of Latinos in the Southwest, but the population has grown tremendously including in major cities and smaller industrial cities. Arizona, California, Florida, Illinois, New Jersey, New Mexico, New York, and Texas contain three-quarters (74 percent) of the nation's Latino population. This is down from 79 percent in 2000 and 84 percent in 1990.[83] As a reflection of the increasing dispersal of the Latino population, 23 states have at least one jurisdiction that meets the minimum population thresholds and are hence covered under Section 203 of the VRA for the Spanish language, which requires them to provide election materials in Spanish and Spanish-language assistance at polling places.

Participation

Large turnout disparities exist between white and Latino populations, including Mexican Americans and Puerto Ricans.[84] Among citizens, the Hispanic voter turnout rate in the 2012 presidential election was 48.0 percent, while the turnout rate for white voters was 64.1 percent.[85] The socioeconomic differences between Latinos and other groups help to explain this disparity. A study seeking to understand why turnout differs between Latinos and other groups analyzed the factors impacting voter participation.[86] Using data contained in the U.S. Census Bureau's Current Population Survey, the researchers ran two statistical models.[87] The first used only racial-ethnic and national-origin factors, while the second tested the impact of socioeconomic variables including age, education, family income, and residential stability.[88] The researchers found that "virtually all of the overall Latino group differences disappear when socioeconomic variables are taken into account."[89] Education, age, and income are the demographic factors most strongly related to voter turnout[90] and Mexican Americans and Puerto Ricans are at a disadvantage compared with Anglos on each of those indicators.[91]

Courts have repeatedly noted the relationship between discrimination and social inequality.[92] A U.S. Senate Judiciary Committee report accompanying the 1982 amendments to Section 2 of the VRA identified several factors for courts to use when assessing whether a violation exists.[93] One of these factors is "the extent to which members of the minority group … bear the effects of discrimination in such areas as education, employment and health, which hinder their ability to participate effectively in the political process."[94] As the Supreme Court explained in *Thornburg v. Gingles*, "political participation...tends to be depressed where minority group members suffer effects of prior discrimination such as inferior education, poor employment opportunities, and low incomes."[95] Between 1982 and 2005, in 13 reported successful Section 2 cases involving Latinos, courts found that discrimination in these other areas did inhibit Latinos' ability to effectively participate in the political process.[96]

The ongoing discriminatory efforts discussed below—including voter intimidation, discriminatory redistricting, attempts to dilute the Latino vote, and the denial of language assistance—combine with this history of prior discrimination to further suppress Latino participation.

Elected Officials

The last 15-20 years have seen some improvement in Latino electoral opportunity. Data from the National Association of Latino Elected Officials shows that in 1996, 180 Latinos held elected office at the state or federal level.[97] By 2009, that number had increased to 277, and it climbed to 320 by 2013.[98] Though this trajectory is impressive, its significance should not be exaggerated. A separate statistical analysis shows that it continues to be difficult for a Latino candidate to get elected in a jurisdiction without a Latino majority:

> **Hispanic voters are now more likely to elect Latino candidates in the majority-minority districts that have been created [for them] than they were in 1992 (at least with regard to state senate and congressional districts) … [but] like African American representatives, the vast majority of Latino representatives are elected from majority-minority districts. The percentage of districts with non-Hispanic majorities represented by Latino legislators has risen since 1992, but, like the increase in the number of African American representatives elected from majority-nonblack districts, this increase has been small. Moreover, a number of the Latino representatives elected from districts with non-Latino majorities won in districts where blacks and Latinos together formed a majority—although the share of Latino victories in districts characterized by black-and-Hispanic majorities is lower than the share of African American victories in such districts.[99]**

Types of Discrimination

Voting barriers for Latino voters have continued to the present day, not only in jurisdictions where they have historically had a strong presence,[100] but also in places where the community has just recently started to grow.[101] Historical—and ongoing—types of discrimination include voter intimidation, discriminatory redistricting, the use of at-large elections to dilute the Latino vote, and the denial of language assistance. Additionally, Latino voters have encountered other modern-day voting restrictions that present significant challenges in exercising their right to vote.

Between January 1995 and June 2014, 29 of the denials of preclearance under Section 5 of the VRA have concerned Latino voting rights. Additionally, over half of the successful cases filed during this time period under Section 2 of the VRA have involved Latino voters (96 out of 171).[102] Out of these cases affecting Latino voters, 82 involved a successful challenge to the use of at-large methods of election and seven successfully challenged a redistricting plan.

Sanchez v. Colorado,[103] which was decided in 1996 by the Tenth Circuit, was a classic case of Latino vote dilution. The Latino plaintiffs in the case challenged a state legislative

redistricting plan that did not provide for a majority Latino district (House District 60) in the San Luis Valley. A consulting firm hired by the Colorado Reapportionment Commission found that there was racially polarized voting and it was "necessary to create districts that are more heavily Hispanic in the San Luis Valley than elsewhere in the state because of the degree of racially polarized voting found in this area of the state."[104] Nonetheless, the commission's apportionment of District 60 resulted in a district where Latinos comprised only 42.4 percent of the voting age population.[105] Other factors also painted a picture of the hostility faced by the Latino community in the area. For example, the Anglo incumbent for the District 60 House seat had referred to Latinos as "wetbacks," and plaintiffs testified about problems such as: the placing of voter registration branches "in Anglo homes, where Hispanics would feel uncomfortable entering… the appointment of all Anglo election judges," and missing Latino voters from the registration rolls.[106] Importantly, since the District 60 house seat was drawn in 1940, it had only been held by Anglos.[107] The court ultimately held that the configuration of District 60 diluted the Latino vote and remanded the case back to the district court, with directions that the court order the State of Colorado to implement a remedial plan that would include a Latino-majority district centered in the San Luis Valley.[108]

Additional Section 2 cases have included claims such as discriminatory challenges to individuals' voting rights. A recent example is *United States v. Long County, Georgia,*[109] a 2006 lawsuit filed against the County for unlawfully targeting Latino voters. Long County had experienced a dramatic increase (460 percent) in its Latino population between 1990 and 2000, and in 2000, the community made up 8.4 percent of the County's population. In the 2004 election, the right to vote of 45 Latino residents was challenged on the grounds that they were not U.S. citizens. Even though none of these challenges were actually supported, the County required all 45 Latino residents to attend a hearing and prove their U.S. citizenship. Other non-Latino residents whose right to vote had been challenged on other grounds, however, were not required to attend such a hearing. In 2006, the federal court entered a consent decree requiring the County to (1) notify the 45 Latino voters that the challenges to their right to vote were unsubstantiated, (2) implement uniform voter challenge procedures, and (3) properly train their election officials and poll workers.[110]

At the NCVR regional hearing in New York City, Juan Cartagena, President & General Counsel of Latino Justice PRLDEF, (far right) said "[W]e consistently treat citizens in this country as if they have to earn and re-earn their right to vote. We don't treat it as a right. […] [That] explains why so many of us who are eligible to vote and have registered to vote have to re-approve that we are eligible to vote again, and again. […] It is time that we treat the vote as a right in a democracy." PHOTO CREDIT: CHRIS FIELDS

Another example of targeted challenges against Latinos took place in Atkinson County, Georgia. In 2004, 95 Latino registered voters—78 percent of all Latino voters in the county—had their right to vote challenged on the basis of their citizenship. Like in Long County, the challenged voters were forced to appear at the county courthouse to defend their voting rights.[111] However, "after county attorney Russ Gillis began the hearing, it didn't take him long to get to his point. The challenges were dismissed because they were 'legally insufficient because they're based solely on race,' he said to the courtroom."[112]

Jurisdictions' failure to provide the necessary and often required language assistance is also a persistent problem for Latino voters. Out of the 58 successful language assistance cases and pre-litigation settlements filed between January 1995 and June 2014, 46 of them (79 percent) were brought on behalf of Spanish-speaking voters. As discussed above, English-only elections were historically utilized to keep Spanish-speaking voters form the polls. Today, as some jurisdictions throughout the United States fail to adequately comply with federal requirements for language assistance, Spanish-speaking voters continue to be denied full, meaningful, and equal access to the polls. As discussed in more detail in Chapter 7, the provision of language assistance at the polls has been shown to positively impact voter participation in Latino communities.

According to the Pew Hispanic Center, Latinos "will account for 40% of the growth in the elgibile electorate in the U.S. between now and 2030, at which time 40 million Hispanics will be eligible to vote, up from 23.7 milion now."[113] Whether these new eligible voters become actual voters will depend, in large part, on the legal protections in place to ensure that access to all aspects of voting is free of disrimination and unecessary barriers. As the Latino electorate continues to grow, it is more imperative than ever that access to the ballot is not encumbered by racial discrimination.

III. NATIVE AMERICANS

Although they inhabited what is now the United States long before white settlers arrived, Native Americans have only relatively recently been given the right to vote under the laws of the United States and still struggle to achieve full participation in the political process. While the Voting Rights Act applies to Native Americans, relatively little voting rights litigation was brought on behalf of Native Americans until fairly recently.[114] But when such litigation has been brought, "courts have invariably found patterns of widespread discrimination against Indians in the political process."[115]

History and Background

As President Richard Nixon said in 1970,

> **The First Americans—the Indians—are the most deprived and most isolated minority group in our nation. On virtually every scale of measurement—employment, income, education, health—the condition of the Indian people ranks at the bottom. This condition is the heritage of centuries of injustice. From the time of their first contact with European settlers, the American Indians have been oppressed and brutalized, deprived of their ancestral lands and denied the opportunity to control their own destiny.[116]**

Discrimination against Native Americans in voting can be traced back to at least 150 years ago—to a time when Native Americans were deemed not to be citizens of the United States and the policy of the federal government was the "eventual assimilation of the Indian population" and the "gradual extinction of Indian reservations and Indian tribes."[117] Throughout the 1800s, Native-American tribes were forcibly removed from their lands to reservations, where they were to end their nomadic way of life and, as President Andrew Jackson put it, "cast off their savage habits and become an interesting, civilized, and Christian community."[118] The intentional extermination of the buffalo that Native Americans needed to survive—an estimated 15 million buffalo were killed between 1872 and 1883—forced Native Americans into dependency upon the United States and kept them confined to the reservations.[119] Sacred Native-American rituals and practices were outlawed, and the government attempted to "detribalize" young Native Americans by sending them to federally supervised schools in which students were forbidden to speak their native languages or practice Native-American traditions.[120] The adoption of a land allotment system proved another "efficient device for separating Indians from their land and pauperizing them."[121] While some treaties provided that Native Americans could become citizens of the United States, the naturalization process was often so demanding that few Native Americans could undertake it.[122] And those Native Americans who were not citizens had no federally protected right to vote and thus had no power to influence the laws passed by Congress to control their affairs.[123]

Congress extended citizenship—including the federally protected equal right to vote—to all Native Americans in 1924, yet a systemic denial of the right to vote continued.[124] For example:

- In 1925, the Alaska Territorial Legislature enacted a literacy law that required "voters in territorial elections be able to read and write the English language." When Alaska's constitution became operative in 1959, it included an English literacy requirement as a qualification for voting; the requirement was not repealed until 1970.[125]

- Into the 1940s Idaho, Maine, Mississippi, New Mexico, and Washington prohibited "Indians not taxed" from voting, even though they allowed whites who did not pay taxes the right to vote.[126]

- Arizona denied Native Americans living on reservations the right to vote because they were "under guardianship" of the federal government. This policy remained in place until 1948.[127]

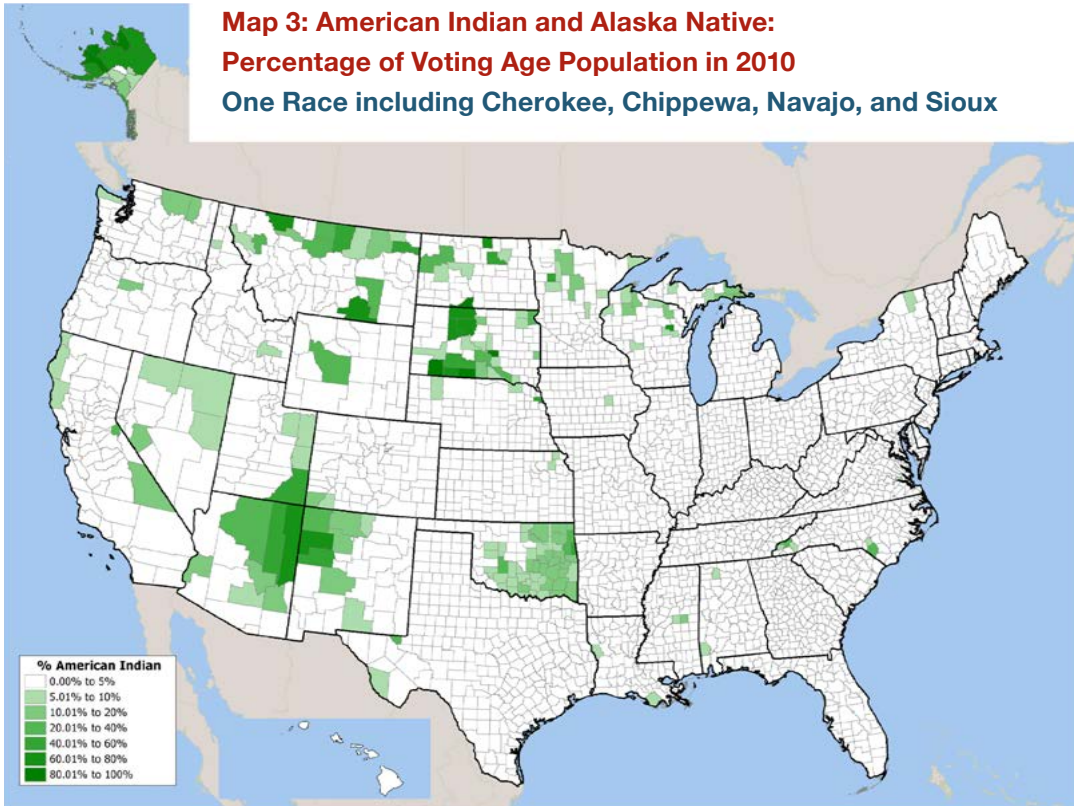
- Utah denied Native Americans living on reservations the right to vote because, under state law, they were considered non-residents. The Utah Supreme Court upheld this law, and only after the United States Supreme Court agreed to review the case did the state legislature repeal it in 1957.[128]

- In Colorado, Native Americans residing on reservations were not permitted to vote until 1970.[129]

These abuses were a major impetus for Congress's extension of the Voting Rights Act to language minorities, including Native Americans, in 1975.[130]

Geography

Map 3: American Indian and Alaska Native:
Percentage of Voting Age Population in 2010
One Race including Cherokee, Chippewa, Navajo, and Sioux



As can be seen in Map 3, the American Indian and Alaska Native population is concentrated in states such as Alaska, Arizona, Montana, New Mexico, North Dakota, Oklahoma, and South Dakota.[131] They are a small share of the population, but in certain counties they make up a significant portion—if not a majority—of the population. In a handful of states Native Americans have sufficient numbers and potential voting power to affect election outcomes, for example in recent races for U.S. Senate in Alaska and Montana.[132]

Participation

Although the U.S. Census does not publish as much data on voting by Native Americans as it publishes regarding voting by whites and other groups, analyses show Native-American voting rates are among the lowest of all racial and ethnic groups in the United States. Courts have consistently found participation differentials, and census data from the 2008 and 2012 presidential elections show a differential on a national basis. In the 2008 election, 47.5 percent of American Indian and Alaska Native citizens of voting age voted, while 66.1 percent of non-Hispanic white citizens of voting age voted.[133] Similarly, in the 2012 election, 46.6

percent of American Indian and Alaska Native citizens of voting age reported voting, compared to 64. percent of non-Hispanic white citizens of voting age.[134]

Courts charged with addressing voting discrimination against Native Americans have acknowledged that low political participation is one of the effects of past discrimination.[135] One of the legacies of the discrimination faced by Native Americans is a severely depressed socioeconomic status—in every socioeconomic factor reported in the census, Native Americans today lag far behind their white counterparts.[136] Disparities in socioeconomic status are causally connected to Native Americans' depressed level of political participation.[137] These disparities combine with "the pervasive myth that Indians care only about politics on the reservation, and the lack of VRA enforcement" to create an environment in which many Native-American communities still, de facto, lack the right to vote.[138] Harassment, intimidation, and misinformation further thwart Native Americans' efforts to register and vote, despite the protections of the VRA.[139]

Elected Officials

Though the numbers are slowly increasing, it has proven very difficult for Native Americans to get elected to high office. They have been most successful in state legislatures: there are currently 75 American Indian, Alaska Native, and Native Hawaiian state legislators in 17 states.[140] In 2012 there were no Native-American members of the U.S. Senate and two Native-American members of the U.S. House of Representatives.[141]

Types of Discrimination

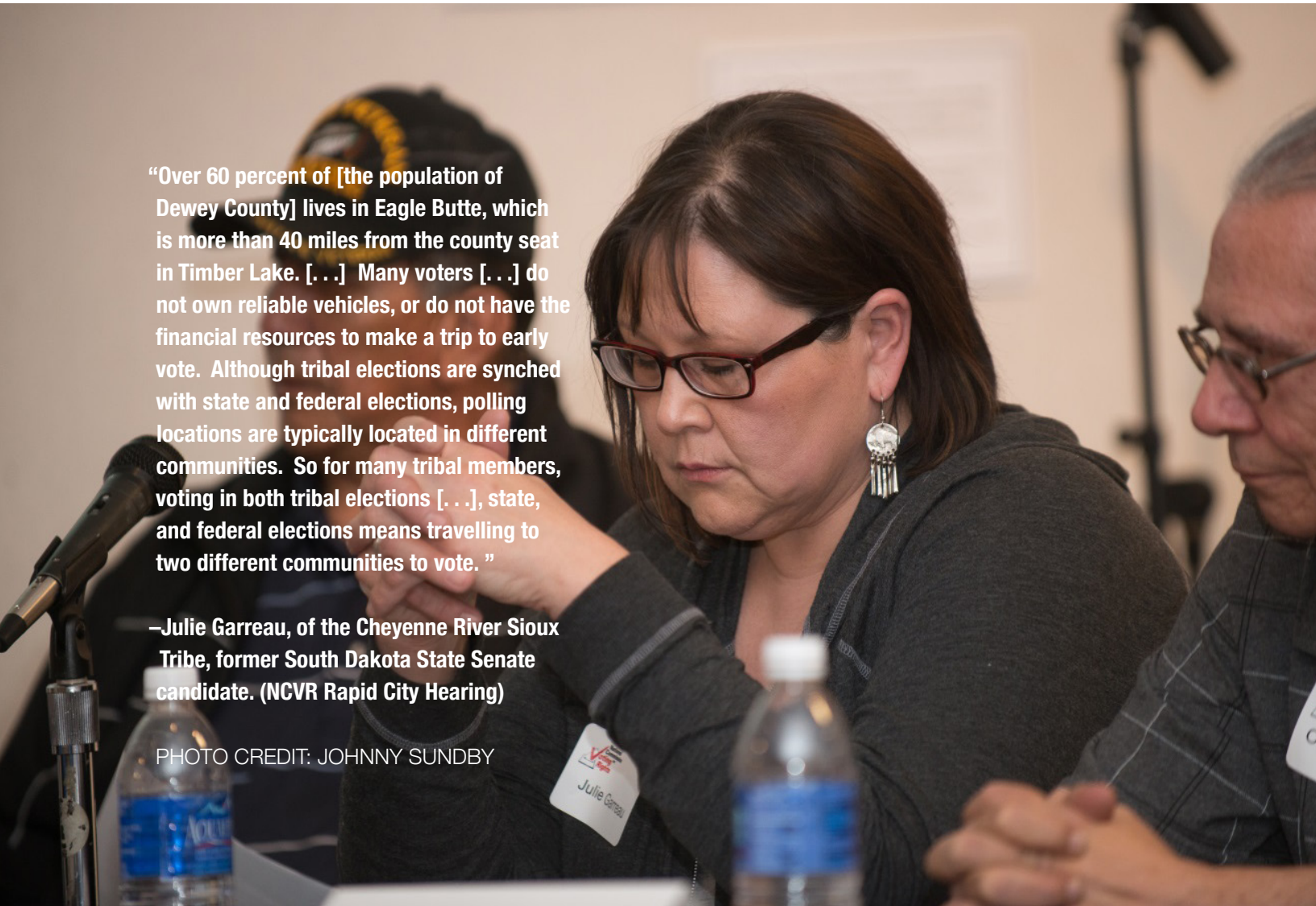
Since 1973, there have been more than 30 successful challenges to redistricting schemes and methods of election that dilute Native-American voting power.[141a] Between January 1995 and June 2014 there were 18 successful cases brought by or on behalf of Native-American plaintiffs under Section 2 of the VRA (not including language assistance cases). Over half of those cases involved at-large methods of election; three of the cases involved redistricting plans.

Also between January 1995 and June 2014, there were five successful cases brought by Native Americans or on behalf of Native Americans by DOJ under the VRA's language assistance provisions concerning bilingual election assistance; the languages involved were Keresan, Lakota, Navajo, and Yup'ik.[142] A recent case from Alaska is illustrative. Prior to the 2008 election, plaintiffs sued Alaska for failure to provide translated election materials and language assistance at polling places to thousands of Yup'ik-speaking voters in the Bethel Census Area. The court in *Nick v. Bethel* granted the plaintiffs a preliminary injunction requiring the state to provide language assistance to Yup'ik voters, including translators, sample ballots in Yup'ik, pre-election publicity in Yup'ik, and a Yup'ik glossary of election terms

for the 2008 primary and general election.[143] In 2010, the parties entered into a settlement requiring the state to provide bilingual election materials, outreach workers, and notices of election in all subsequent elections as long as the Bethel Census Area remains subject to the language provisions of the VRA.[144]

There also have been several cases involving blatant interference with Native Americans registering and voting. Incidents have included:

- Refusal by election registrars to provide registration forms to groups involved in registering American Indians and Alaska Natives;
- Purging Native Americans from voter registration lists;
- Baseless charges of voter fraud against American Indians and Alaska Natives; and
- Failure to provide sufficient polling places in Native-American communities.[145]



"Over 60 percent of [the population of Dewey County] lives in Eagle Butte, which is more than 40 miles from the county seat in Timber Lake. [. . .] Many voters [. . .] do not own reliable vehicles, or do not have the financial resources to make a trip to early vote. Although tribal elections are synched with state and federal elections, polling locations are typically located in different communities. So for many tribal members, voting in both tribal elections [. . .], state, and federal elections means travelling to two different communities to vote."

–Julie Garreau, of the Cheyenne River Sioux Tribe, former South Dakota State Senate candidate. (NCVR Rapid City Hearing)

PHOTO CREDIT: JOHNNY SUNDBY

Case Study
South Dakota

South Dakota, which has a Native-American population that is 8.9 percent of the state's total population and had two counties that were covered jurisdictions under Section 5 of the VRA, provides examples of many of the types of discrimination that Native Americans have faced in voting. Even after the VRA was expanded in 1975 to incorporate language minorities, including Native Americans, South Dakota persistently engaged in discriminatory conduct—using a broad range of tactics—that limited the voting rights of Native Americans. Whether simply denying counties with large Native-American populations the ability to form a government, or redistricting after a Native-American candidate won a primary, or diluting the Native vote through malapportionment or packing, the actions of officials in South Dakota exemplify the various forms of voting discrimination faced by Native Americans across the country.

VOTE DENIAL BASED ON RESIDENCE IN AN "UNORGANIZED" COUNTY

In 1975, a federal court of appeals in *Little Thunder v. South Dakota* found that the State's prohibition on residents of "unorganized" Counties voting for county government officials violated the Equal Protection Clause of the Fourteenth Amendment.[146] "Organized" counties all had a full complement of elected county officials who administered the affairs of the county (i.e., county commissioners, judges, auditor, sheriff, etc.).[147] The "unorganized" counties did not elect their own county officials but, rather, were attached to an adjoining county for purposes of government and administration. The residents of unorganized counties, however, could not vote for the county officials in the county to which theirs was attached.[148] Those residents, therefore, were not able to vote for most of the elected county officials who governed them.[149] The residents of the "unorganized" counties—Todd, Shannon, and Washabaugh—were overwhelmingly Native American.[150]

Even after the residents of Todd, Shannon, and Washabaugh counties were granted the right to vote for the elected officials who conducted the affairs of their counties, they were still denied the right to run for those offices. The United States challenged the denial of the right of residents of Shannon County to run for the county offices of Fall River County that governed Shannon County in *United States v. South Dakota.*[151] The justification offered for this restriction was that "the great majority of Shannon County voters reside on the Pine Ridge Indian Reservation and hence have little, if any, interest in the county government of either Shannon or Fall River County," and "a personal stake in the government insufficient to insure responsible exercise of their duties."[152] The United States Court of Appeals for the Eighth Circuit found this justification insufficient and held that the practice violated the Equal Protection Clause of the Fourteenth Amendment and required that residents of Shannon County be allowed to run for the offices in question in Fall River County.[153]

DISTRICT BOUNDARIES DRAWN TO INCLUDE ONLY LAND OWNED BY NON-NATIVE AMERICANS

In 1999, the United States sued Day County, South Dakota, for denying Indians the right to vote in a sanitary district.[154] In 1993, officials in Day County created a sanitary district near Enemy Swim Lake, but the district boundaries included only 13 percent of the land around the lake, all of which was owned by non-Native Americans.[155] The County intentionally excluded the remaining land around the lake, which was owned by the Sisseton-Wahpeton Sioux Tribe and about 200 of the tribe's members.[156] Thus, "all of the voters in the district were white."[157] The case settled, and both the County and the district admitted that the boundaries unlawfully denied Native-American citizens the right to vote and agreed to a new plan that included the Native-owned land.[158]

MID-DECADE REDISTRICTING TO ELIMINATE A MAJORITY-MINORITY DISTRICT

In 2000, in *Emery v. Hunt*, voters in South Dakota successfully challenged the state legislature's attempt to abolish a majority Native-American single-member state house district. A 1991 apportionment provided that each of the State's 35 districts would be entitled to one senate member and two house members elected on an at-large basis, with the exception of two single-member house districts—District 28A and District 28B—that were explicitly drawn to protect minority voting rights.[159] Native Americans comprised 60 percent of the voting age population (VAP) of District 28A, which included the Cheyenne River Sioux Reservation and portions of the Standing Rock Sioux Reservation, but less than 4 percent of the VAP of District 28B.[160] After a Native American won a Democratic primary in District 28A, the legislature adopted a mid-census plan that replaced District 28A and District 28B with a single majority-white multi-member house district.[161]

Members of the Cheyenne River Sioux Tribe sought relief under both the South Dakota Constitution and Section 2 of the Voting Rights Act.[162] The U.S. District Court for the District of South Dakota certified the state law question to the South Dakota Supreme Court, which held that the state legislature had "acted beyond its constitutional limits."[163] The South Dakota Constitution mandated apportionment in 1991 and every 10 years thereafter,[164] and a 1995 memorandum by the South Dakota Legislative Research Council confirmed that, in the absence of a successful legal challenge, no redistricting could take place before 2001.[165] The 1991 plan was reinstated, and Tom Van Norman became the first Native American from the Cheyenne River Sioux Indian Reservation to be elected to the South Dakota state legislature.[166]

REFUSAL TO COMPLY WITH PRECLEARANCE REQUIREMENT OF SECTION 5 OF THE VRA

Shannon County and Todd County, South Dakota, home to the Pine Ridge and Rosebud Indian Reservations respectively, were covered by Section 5 of the VRA as a result of the 1975 amendments to the Act.[167] Thus, any voting changes affecting those counties—including statewide changes—should have been submitted to the DOJ or the U.S. District Court for

the District of Columbia for preclearance.[168] From 1976 to 2002, South Dakota enacted over 600 statutes and regulations that affected elections or voting in Shannon and Todd counties, yet *fewer than 10 were submitted for preclearance.*[169] Some of the changes that were enacted without being submitted for preclearance that had the potential to dilute Native-American voting strength were authorization for municipalities to enact numbered place systems, which prevent single-shot voting, and a majority-vote requirement for primary races for the U.S. Senate, the U.S. House of Representatives, and governor (see Chapter 5 for more detail about these tactics).[170]

In August 2002, members of the Oglala and Rosebud Sioux Tribes in Shannon and Todd counties filed suit against South Dakota seeking to force it to submit the more-than 600 voting changes for preclearance.[171] The court entered a consent order in December 2002 in which the State admitted that it had failed to obtain preclearance for all of the voting changes it was required to preclear under Section 5.[172] The State was immediately enjoined from implementing the statutes discussed above regarding a numbered seat requirement and majority-vote requirement, and required to develop a plan to submit all un-precleared voting changes in order to "promptly bring the State into full compliance with its obligations under Section 5."[173] The State made its first submission under the consent order in April 2003; it took approximately three years to complete the process of submitting the un-precleared voting changes.[174]

"PACKING" MINORITIES INTO A DISTRICT

As discussed in Chapter 5, one method of diluting a minority group's voting power is to "pack" the minorities into as few districts as possible. In 2006, a federal appeals court found in *Bone Shirt v. Hazeltine* that South Dakota's 2001 legislative redistricting plan violated Section 2 of the VRA by packing one district with Native Americans at the expense of allowing Native Americans the opportunity to elect a candidate of their choice in two separate districts.[175] As discussed above, South Dakota's legislative plan has 35 districts, with each district electing two members of the State House of Representatives at-large and one member of the state Senate. The exception was District 28, which was divided into two single-member districts (28A and 28B). In the plan at issue, there were only two Native American-majority districts: Districts 27 and 28A. District 27 had a 90 percent Native-American population.[176] District 26 was adjacent to District 27 and had only a 30 percent Native-American population. Under the plaintiffs' proposed plan, District 26 would be split into 26A and 26B for the State House of Representatives, and Native Americans would comprise over 65 percent of the voting age population in District 27 and over 74 percent of the voting age population in District 26A.[177] When the district court found that the State's plan violated Section 2, it ordered the State to submit a remedial plan, but the State refused to do so. The district court adopted the plaintiffs' remedial plan, and the appeals court affirmed.[178]

TWO FORMS OF VOTE DILUTION: MALAPPORTIONMENT AND THE CREATION OF NEW DISTRICTS

As discussed in Chapter 5, when districts are malapportioned it can impermissibly dilute the voting strength of a minority group. In 2005, the U.S. District Court for the District of South Dakota ruled that county commissioner districts in Charles Mix County "[we]re malapportioned in violation of the one-person-one-vote standard of the Equal Protection Clause."[179] Native Americans made up 29.5 percent of the population of Charles Mix County, which was governed by a three-member County Commission elected from three single-member districts.[180] While the ideal district size—one where all districts have the same population—was 3,117, district populations ranged from 2,850 persons to 3,443 persons (a deviation of 19 percent from equally apportioned districts).[181] "[N]o Native Americans had ever been elected from the districts."[182] In response to a lawsuit brought by four members of the Yankton Sioux Tribe, the county justified the malapportionment by pointing to its policy against splitting townships, towns, or cities when creating voting precincts.[183] When evidence demonstrated that it would be possible to draw districts with a total deviation of less than 10 persons without splitting a single township, town, or city,[184] the court ruled the apportionment unconstitutional and ordered that the districts be redrawn.[185] The county then adopted a plan that created one majority-Native American district out of three, and in 2006 that district elected a tribal member to represent it on the Commission.[186] Although the court had ruled on the malapportionment claim, the plaintiffs' other claims were pending, and the parties entered into a consent decree in December 2007 under which the County became subject to preclearance until 2024 under the provisions of Section 3(c) of the VRA.[187]

Shortly after the court ruled in the plaintiffs' favor on the malapportionment claim, however, voters circulated a petition to increase the number of commissioners from three to five—a change that would have again diluted Native-American representation.[188] They obtained enough signatures to get the proposal on the ballot, and county voters approved the measure in November 2006.[189] "The county . . . redrew its districts in early 2007, creating [only] one majority-[Native American] district out of five, thus diluting [Native-American] voting strength."[190] But pursuant to the consent decree, the County submitted the plan to DOJ for preclearance.[191] DOJ interposed an objection to the five-member plan, noting that Charles Mix County and the State of South Dakota have a history of voting discrimination against Native Americans and that support for the effort to change the number of county commissioners increased dramatically following a Native-American candidate's success in the June 2006 Democratic primary election.[192] As a result of that denial of preclearance, the three-member plan remains in effect today.

UNEQUAL ACCESS TO EARLY VOTING SITES AND LATE REGISTRATION

South Dakota also provides an example of how expanding access to the ballot often does not benefit all groups equally. As discussed in detail in Chapter 6, in *Brooks v. Gant*, Native Americans in Shannon County, South Dakota, sought equal access to early voting and late registration sites.[193] The site for early voting and late registration was a great distance from where most Native Americans in Shannon County lived; that distance, combined with limited access to vehicles and high rates of poverty, essentially meant that most Native Americans could vote only on Election Day and most non-Native Americans could vote—and register late—for 46 days before Election Day. The plaintiffs in *Brooks* sought to have a satellite office for early voting established on the reservation. The case settled when South Dakota officials and county defendants agreed to provide early voting at the satellite locations proposed by the plaintiffs through the year 2018.

IV. ASIAN AMERICANS

Asian Americans have long been denied the right to vote through restrictive naturalization laws and social and economic discrimination. Although they are currently the fastest-growing minority group in the United States,[194] "Asian Americans are underrepresented in almost every measure of political participation, from ballot boxes to the hallowed halls of government."[195] Ongoing discrimination, low rates of political participation and representation, and unmet language assistance needs continue to impede Asian-American enfranchisement and justify the need for continued protection under the Voting Rights Act.

History and Background

Throughout U.S. history, Asians have been the target of discriminatory laws aimed at political and economic disenfranchisement. Foreign-born Asians had long been excluded from American political life due to citizenship restrictions based on race and national origin.[196] One of the most powerful barriers to citizenship was the U.S. Naturalization Act of 1790, which specified that only "free white person[s]" were eligible to become naturalized citizens.[197] While the 1870 Naturalization Act extended citizenship rights to individuals "of African descent,"[198] courts continued to deny immigrants of Asian descent naturalization privileges. In 1878, the U.S. Court of Appeals for the Ninth Circuit interpreted the Act to bar Chinese naturalization because Chinese immigrants, as "Mongolians," were not "white person[s]" within the meaning of the term in the statute, and thus not eligible for U.S. citizenship.[199] In 1923, the Supreme Court reached a similar holding in *United States v. Bhagat Singh Thind*,[200] when it determined that Thind, an Indian national, was "Caucasian" but not "white" within the meaning of the Act; he was therefore ineligible to become a naturalized citizen.

Asians were often victims of violence and scapegoating as nativist movements gained popularity, leading to widespread denial of social, political, and economic rights. Immigrant communities were targeted by discriminatory laws and regulations that placed restrictions on property and business ownership. One scholar noted,

> **For example, a "miner's tax" had to be paid by any foreigner (miner or not) who lived in a mining district, targeting the Chinese in effect if not by name. Similarly, commutation taxes required ship owners to post a $500 bond (or a payment of $5 to $50 per passenger) on each Chinese immigrant coming into the country, and more for mentally ill or disabled passengers. The 1862 Chinese police tax, designed to discourage Chinese immigration, forced all Chinese laborers to pay $2.50 per month.[201]**

In *Yick Wo v. Hopkins*, the Supreme Court heard an appeal from *Yick Wo,* a Chinese immigrant who was imprisoned in 1885 for violating a San Francisco ordinance that prohibited the

ownership of laundries constructed from certain building materials without the approval of the Board of Supervisors.[202] At that time, many laundries were owned by residents of Chinese origin[203] and requests for approval from Chinese business owners were uniformly denied.[204] The Court held that the discriminatory enforcement of the law violated the Equal Protection Clause.[205] In its decision the Court asserted that, "[Voting] is regarded as a fundamental political right, beacuase [it is] preservative of all other rights."[206]

Despite this victory, the decision inflamed opposition to the rights of Asian immigrants, leading many Americans to support exclusion.[207] In the 1944 case of *Korematsu v. United States*, the Supreme Court found that the federal government did not violate equal protection or due process when it excluded U.S. citizens who were of Japanese origin from certain designated military areas within the United States during World War II, which included large regions of the West Coast.[208] Executive Order 9066,[209] which was at issue in the *Korematsu* case, also authorized the internment of approximately 120,000 Japanese Americans who had been residing in these areas.[210]

It was only relatively recently that Asian immigrants were finally granted the ability to naturalize and attain the rights of American citizenship. Prior to 1965, U.S. immigration policy heavily restricted immigration from Asia; the majority of people of Asian descent in the United States during this time were native-born Americans.[211] It was not until 1943 that Chinese-born residents were first permitted to become citizens.[212] Asian Indians and Filipinos were permitted to naturalize in 1946.[213] For Japanese and other Asian ethnic groups, that right came in 1952.[214]

As immigration from Asia increased, Asian Americans still faced substantial barriers to full enfranchisement. In 1965, the Hart-Celler Act removed immigration restrictions on the basis of national origin.[215] This led to "unprecedented" immigration to the United States from Asia.[216] Between 1976 and 1988 the Asian and Pacific Islander population in the United States grew by 107.8 percent.[217]

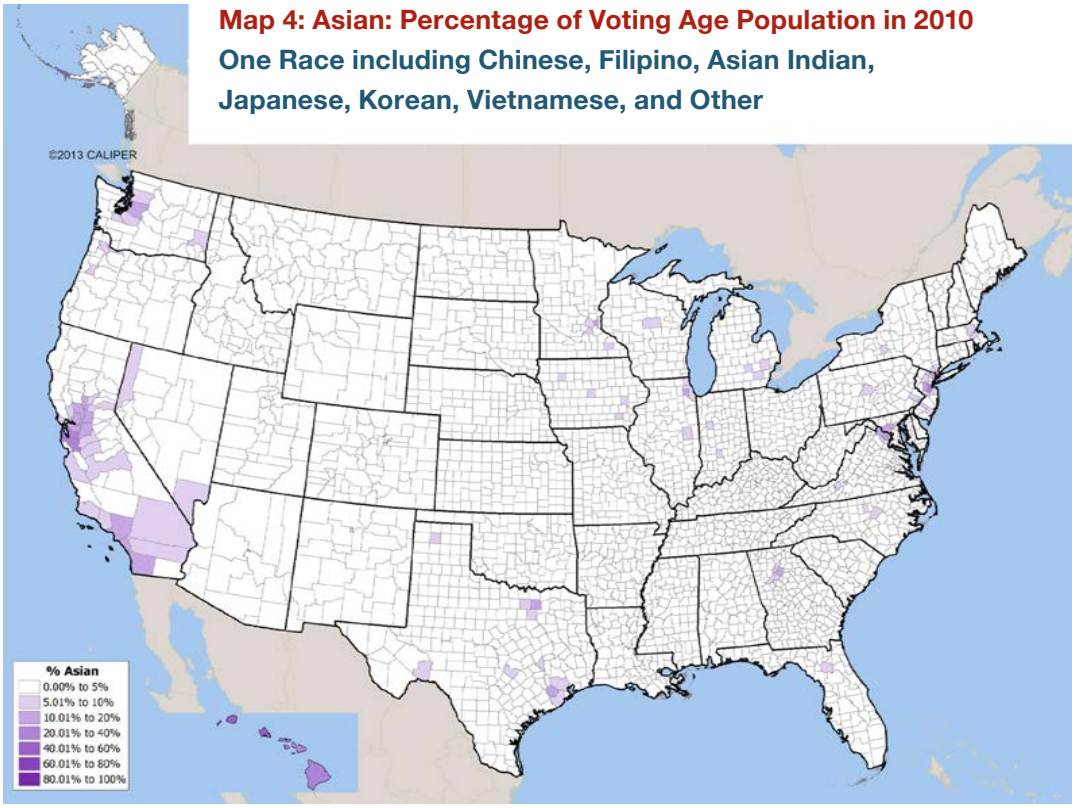
The Asian-American communities that emerged often suffered discrimination due to their language minority status. Thus, Asian Americans who were eligible to vote were often prevented from exercising their rights by English literacy and language requirements.[218] As Representative Edward R. Roybal noted in 1975, Asian Americans "bor[e] the brunt of this exclusionary practice not only at the voting booth but in the classroom as well[,]" where Asian-American students faced profound discrimination.[219]

When Congress enacted Section 203 of the Voting Rights Act in 1975, jurisdictions were required to provide bilingual voting materials for designated language minorities. Yet areas with significant Asian-American populations with limited English proficiency were only covered under the bilingual assistance provisions in a few jurisdictions because there were few

places where limited English proficient voting age citizens from a particular Asian language comprised at least 5 percent of the citizen voting age population, which was the required threshold.[220] To help address the problem of excluding large numbers of language-minority voters who did not meet the 5 percent coverage formula originally enacted in 1975, the 1992 Voting Rights Language Assistance Act expanded the coverage formula to include an alternative where a jurisdiction would also be covered if 10,000 voting age citizens from a minority language group were limited English proficient and the other criteria for coverage were satisfied.[221] This amendment expanded Section 203 coverage to areas such as New York County for Chinese languages and Los Angeles County, where Chinese, Filipino, Japanese, and Korean communities benefitted from the newly offered language assistance.[222] Though bilingual assistance under Section 203 certainly removed some barriers to Asian-American enfranchisement, Asian Americans have historically had limited success in invoking other protections under the Voting Rights Act.[223] These difficulties are discussed at greater length below.

Geography

Map 4: Asian: Percentage of Voting Age Population in 2010
One Race including Chinese, Filipino, Asian Indian, Japanese, Korean, Vietnamese, and Other



In 1960, there were fewer than 1 million Asian Americans in the United States, less than 0.5 percent of the country's population.[224] Asians were 5 percent of the population in 2005 and will be at least 9 percent in 2050.[225] The Asian population grew by 46 percent from 2000 to

2010, a rate higher than any other group.[226] This high growth rate is owed mostly to immigration, with 2012 statistics suggesting that 74 percent of Asian adults in the United States are foreign-born.[227]

As can be seen from Map 4, Asians are concentrated in urban areas, and continue to live mostly on the coasts. New destination cities include Houston, Minneapolis, and Washington, D.C.[228] Notably, although Asian-American populations are relatively concentrated in urban centers, this population distribution allows Asian Americans to exert relatively little electoral power, even in California, Hawaii, and New York.[229] For example, while one-third of the Asian-American population resides in California, this population accounts for only 12 percent of California's total electorate.[230]

> **Even at lower levels of jurisdictional granularity, there are only eleven congressional districts in which Asian Americans make up 20% or more of the district's electorate. Of the eleven congressional districts, all but one are in California or Hawaii. Among municipalities, Asian Americans make up 25% or more of the electorate in seventy-five districts.[231]**

The demographic distribution of Asian Americans has thus limited the group's electoral impact.[232]

Participation

Compared to other racial minority groups protected by the VRA, Asian Americans have low voter registration and turnout rates, despite being higher up on the education and income scales, indicators usually associated with higher levels of political participation.[233] In 2008 and 2012, Asian Americans and Latinos voted at roughly the same rate even though other socioeconomic factors would normally suggest that their turnout rate would be higher.[234] The voting gaps are not uniform across Asian groups—for example, participation rates are fairly high among Japanese Americans and quite low among Chinese Americans.[235] The ethnic diversity among Asian Americans generally and the range in lengths of residence in the United States make it difficult to pinpoint explanations for Asian American turnout rates.[236] "[L]imited political power and sustained disadvantages," minimal availability of aid through "mobilization networks and organizational support," and "institutional constraints such as haphazard naturalization requirements or tricky registration and voting rules" likely all contribute to low turnout rates.[237]

Asian-American participation rates are likely also attributable to past and ongoing language discrimination. Asian Americans have long been discriminated against in the form of English-only voting mechanisms, in much the same way that African Americans were at one time effectively prevented from voting by literacy tests and other devices.[238] Research indicates

that language assistance materials are of substantial importance to Asian-American voters. According to a 2013 report by Asian Americans Advancing Justice, "30 percent of Chinese Americans, 33 percent of Filipino Americans, 50 percent of Vietnamese Americans and 60 percent of Korean Americans in Los Angeles County used some form of language assistance in the 2008 presidential election."[239] Additionally, according to a 2012 report by Asian & Pacific Islander American (APIA) Vote, more than 1/5 of Asian-American voters surveyed indicated they would be more likely to vote if language assistance was provided.[240]

Elected Officials

There are currently 11 Asian-American members of the U.S. House of Representatives, 98 members of state legislatures, and two Asian American governors.[241] Of these officials, most represent jurisdictions in California, Hawaii, and New York, all of which are Asian-American population centers. Although data are scarce, research shows that that it becomes increasingly difficult for an Asian-American candidate to get elected the higher the office, indicating that many elected officials may only get elected in those places where there is a high voting concentration of Asian Americans.[242] Data from the 2008 National Asian American Survey shows that 22 percent of Asian Americans are represented by an Asian member of the city council, 17 percent have an Asian state representative and 8 percent have an Asian-American member of Congress.[243] If one excludes California and Hawaii from the data pool, those numbers drop to 10 percent, 5 percent, and 1 percent, respectively.[244]

> **"[W]e settled a case with San Mateo County […] to change the at-large system there to the district-based system. San Mateo County is over 40 percent Asian and Latino, yet their board of supervisors have been predominantly white for as long as people can remember. Through the settlement process in the California Voting Rights Act, communities will be able to engage in a community-based redistricting process and be able to ensure that Asian-American voters, as one district, [are] able to have meaningful opportunities to vote," Joanna Cuevas Ingram, an attorney with the Lawyers' Committee for Civil Rights of the San Francisco Bay Area, testified at the NCVR California state hearing.**

Types of Discrimination

Some of the gap in Asian-American registration and voting may be explained by the fact that a majority of Asian Americans are foreign born and thus are not native English speakers, and may not speak English proficiently.[245] Indeed, the 2006-2008 American Community Survey reported that 75 percent of Asian-American adults speak a language other than English at home. The "rate is 89 percent among foreign-born adults and...31 percent among native-born Asian Americans."[246]

As is documented in every election cycle by the Asian American Legal Defense and Education Fund (AALDEF), discrimination against Asian Americans persists at the polls. This is particularly true with regard to the failure to provide required language assistance and poll workers who are poorly trained on how to assist predominantly Asian and Asian-language-speaking voters at the polls.

In 2008, AALDEF observers monitored 229 poll sites in 11 targeted states and surveyed 16,665 voters.[247] The organization reported that, "Language assistance, such as interpreters or translated voting materials, if any, was far from adequate. Notwithstanding federal mandates, poll workers were cavalier in providing language assistance to voters. In our survey, 254 Asian American voters complained that there were no interpreters or translated materials available to help them vote."[248] In one example from that year, AALDEF observers found that in New York City, where language assistance is required by law, a quarter of the Chinese and Korean interpreters needed were absent from the polls.[249] In Boston, the United States DOJ had sued the city under Section 2 of the VRA for discrimination against Chinese interpreters and more than a quarter of Vietnamese voters, and a settlement was reached, applicable through the end of 2008, in which language assistance was mandated.[250] None the less, in the 2008 election the AALDEF survey found 38 percent of respondents in Boston "wished to receive oral language assistance [but] could not find interpreters who spoke their language or dialect."[251]

According to AALDEF observers, problems continued in 2012, especially with regard to localities newly covered by Section 203 a result of the 2011 coverage determinations. As discussed in Chapter 7, Bengali ballots were not provided to voters in Queens, New York; interpreters were lacking throughout New York City; and in Hamtramck, Michigan, there were insufficient numbers of Bengali interpreters.[252] In both the 2008 and 2012 elections AALDEF found instances of hostility and rudeness, and occasional outright racist attitudes among poll workers.

From 1995 to 2014, 17 percent of successful challenges to a jurisdiction's failure to provide adequate bilingual voting assistance involved one or more Asian language.[253] Of these, Chinese was the language most often involved; the other languages involved in at least one case were Bengali, Ilocano, Japanese, Korean, Tagalog, and Vietnamese.[254]

Of those jurisdictions formerly covered under Section 4 of the VRA, relatively few are home to a concentrated Asian-American population. Accordingly, a proportionally small number of Section 5 objections concerned Asian-American voters.

Of the 113 Section 5 preclearance denials during this time period, only three dealt with discrimination against these minority voters.[255] Two of the three objections addressed procedures adopted by Georgia and Texas for verifying the citizenship status of voter registration

applicants.[256] This suggests that Asian Americans continue to face additional burdens associated with demonstrating their eligibility to participate in the political process.

As referenced above, Asian Americans also face particular difficulties in bringing successful challenges under Section 2 due to patterns of population distribution.[257] Because the population of Asian Americans in most jurisdictions is proportionally small, there are not many jurisdictions where Asian Americans could satisfy the first *Gingles* precondition of being able to constitute a voting majority in a geographically compact single-member district, which is necessary for a successful vote dilution challenge under Section 2 of the VRA.[258]

V. CONCLUSION

As discussed above, voting discrimination affecting African Americans, Latinos, Native Americans, and Asian Americans remains a significant issue. In the next two chapters, this report will explore in greater depth the various ways in which voting laws and practices impact the right to vote of these racial and ethnic minorities.

Hearing witnesses listen to testimony at the NCVR Nashville hearing held at the Greater Bethel AME Church.
PHOTO CREDIT: JOSEPH GRANT

"In the June 2010 Democratic primary for the Attorney General race, looking within the boundaries of Assembly District 53 […], the candidate supported by an estimated 83% of Asian American voters received support from only an estimated 4% of non-Asian American voters."

–Eugene Lee of Asian Americans Advancing Justice, Los Angeles at the NCVR California state hearing

CHAPTER 5
Voting Discrimination, 1995–2014: Minority Vote Dilution

I. INTRODUCTION

As discussed in various places in this Report, most forms of voting discrimination fall into one of two categories. The first form consists of practices that have the intent or result of making it more difficult for citizens to vote, commonly called "vote denial," or ballot access restrictions. These issues are discussed in Chapters 6 and 7. The second form consists of circumstances where minority voters are not prevented from voting but where their votes are devalued. This form of discrimination is called "vote dilution" and is the subject of the present chapter.

The Supreme Court first recognized the concept of vote dilution in the 1964 case *Reynolds v. Sims.*[1] In *Reynolds*, Alabama voters challenged the constitutionality of Alabama's legislative districts, which had not been redrawn in decades. The existing plan allotted, for example, over 600,000 people to one Alabama Senate district and fewer than 20,000 to two others.[2] The Supreme Court found that this violated the equal protection rights of voters in the most populated districts. In doing so, the Court stated that "[t]he right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise."[3]

Since the late 1960s, the predominant form of discrimination suffered by minority voters has been vote dilution. Because the VRA's ban on tests and devices made it more difficult for jurisdictions to prevent voters from voting, jurisdictions moved to dilute the minority vote instead.[4] As discussed in Chapter 1, Sections 2 and 5 of the VRA prevent minority vote dilution, but what constitutes vote dilution is usually not as clear-cut as what constitutes a test or device. Indeed, cases based on the Section 2 results standard are notoriously complex[5] because plaintiffs must first satisfy three preconditions (regarding district size and geographical compactness, minority political cohesion, and the defeat of minority-preferred candidates because of white bloc voting) and then prevail on the multi-factor and all-inclusive "totality of the circumstances" balancing test.[6]

Nonetheless, courts have repeatedly found Section 2 vote dilution violations and the Department of Justice (DOJ) has interposed hundreds of Section 5 objections to practices because they weakened the voting strength of minority voters. Vote dilution violations are most common in the context of redistricting and in the use of at-large elections or

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multi-member districts. These two phenomena are discussed below, after a discussion of racial polarized voting, which is a necessary component of vote dilution.

II. RACIALLY POLARIZED VOTING AND ITS ONGOING PREVALENCE

How Analyses of Racial Bloc Voting are Performed

Racially polarized voting occurs when whites and minorities consistently support different political candidates. By definition, racially polarized voting is "a pattern of voting along racial lines where voters of the same race support the same candidate who is different from the candidate supported by voters of a different race."[7] In areas where racially polarized voting exists, there is an increased need for vigilance against attempts to dilute minority power. As the district court explained in *Northwest Austin Municipal Utility District No. One v. Mukasey*, racially polarized voting "enables the use of devices such as multi-member districts and at-large elections that dilute the voting strength of minority communities." [8] Conversely, where voters do not typically vote along racial lines, racial vote dilution cannot occur because voter preferences are not correlated to the race of those voters.

In the process of proving minority vote dilution, plaintiffs typically establish the presence of racially polarized voting by conducting a statistical analysis of voting patterns. The two most frequently used analyses are Bivariate Ecological Regression Analysis and Ecological Inference Analysis. Both of these analyses use two variables, the racial composition of each precinct and the number of votes each candidate received in the precinct, to estimate the amount of white and minority support each candidate received. The accuracy of the analysis depends on the quality of the demographic data for each precinct, the number of precincts, and the variation of the racial demographics among the precincts.[9] Analysts examine a series of elections to determine whether a pattern of racially polarized voting exists.[10]

Findings of Racially Polarized Voting Regarding State Redistricting Plans

Fifty years after the passage of the VRA, racially polarized voting remains a prevalent and persistent phenomenon. The many successful vote dilution claims under Section 2 of the VRA constitute proof of its persistence because one must prove the existence of racially polarized voting to be successful. However, the proof does not stop there. Experts and scholars, both independent and state-hired, have made findings of racially polarized voting. These findings have recognized the existence of racially polarized voting on both national and state levels. Additionally, DOJ has cited racially polarized voting in interposing hundreds of Section 5

objections against proposed voting changes. Thus, racially polarized voting continues to be widespread. Examples of the aforementioned findings are discussed below.

Judicial Findings of Racially Polarized Voting in Challenges to Statewide Redistricting Plans

Over the last three decades, courts across the country have consistently acknowledged the continued presence of racially polarized voting while applying the factors outlined in the Supreme Court's *Thornbug v. Gingles* ruling.[11] The following are cases since 1995 regarding statewide redistricting plans where courts have found racially polarized voting:

Colorado

In *Sanchez v. Colorado*,[12] Hispanic voters challenged the post-1990 State House redistricting plan, alleging that the plan failed to draw a majority Hispanic district, thus violating Section 2 of the VRA. The Tenth Circuit of Appeals found that the plaintiffs "established under the totality of circumstances [that] racial polarization drive the voting community in HD 60 despite limited local success in being elected or appointed to political office."[13] The Tenth Circuit directed the district court to impose a remedy that drew a majority Hispanic district in Southern Colorado.

Montana

Native American voters in Montana challenged the constitutionality of the state legislature redistricting plan adopted after the 1990 census. In *Old Person v. Cooney*, the Ninth Circuit Court of Appeals "conclude[d] that the white majority in the four districts 'votes sufficiently as a bloc to enable it…usually to defeat the [American Indians'] preferred candidate.'"[14] The plaintiffs ultimately lost the case on other grounds.[15]

South Carolina

African-American and white voters in *Smith v. Beasley*[16] challenged the constitutionality of the 1995 State House and Senate redistricting plans in South Carolina. The challenge was raised on the grounds that race was the predominant factor considered in redrawing election districts. The district court noted, "[i]n South Carolina, voting has been, and still is, polarized by race. This voting pattern is general throughout the state and is present in all of the challenged House and Senate districts in this litigation."[17]

Voters in *Colleton County Council v. McConnell*[18] challenged the 2000 state and congressional redistricting plans of South Carolina. In its opinion, the district court directly addressed the presence of severe and persistent racially polarized voting, stating that "[v]oting in South Carolina continues to be racially polarized to a very high degree, in all regions of the state and in both primary elections and general elections. Statewide, black citizens generally are a highly politically cohesive group and whites engage in significant white-bloc voting."[19] Moreover,

> **[I]n order to give minority voters an equal opportunity to elect a minority candidate of choice as well as an equal opportunity to elect a white candidate of choice in a primary election in South Carolina, a majority-minority or very near majority-minority black voting age population in each district remains a minimum requirement.[20]**

Massachusetts

In *Black Political Task Force v. Galvin*,[21] voters challenged the 2001 Massachusetts State House redistricting plan. The lawsuit alleged that the redistricting plan eliminated two majority-minority districts, reduced the minority population into one district and "super-packed" another district so that minorities made up 98 percent of the district's voting age population.[22] The district court found racially polarized voting, noting "the presence of both cohesive African-American voting and a white bloc voting staunch enough to defeat a black-preferred candidate."[23] The district court struck down the redistricting plan and ordered the State to prepare and submit a new plan consistent with Section 2 of the Voting Rights Act.[24]

Tennessee

In *West Tennessee African-American Affairs Council v. Sunquist*,[24a] African-American voters successfully challenged a 1994 redistricting plan for the Tennessee House of Representatives under Section 2 based upon a dilution of minority voting strength in the western portion of the State.Tennessee agreed in the litigation that African Africans vote in a cohesive manner but claimed that white voters do not usually vote as a bloc to defeat candidates supported by African-American voters. On appeal from the district court's ruling in favor of plaintiffs, the U.S. Court of Appeals for the Sixth Circuit affirmed. The court undertook a detailed review of the evidence, and concluded that the district court had not erred in finding that white voters typically cast their ballots against minority-supported legislative candidates.

Wisconsin

In response to a lawsuit filed by Latino voters in Wisconsin, a three-judge district court in *Baldus v. Members of Wisconsin Government Accountability Board*,[24b] found that the post-2010 plan for the State Assembly violated Section 2. The court agreed with expert testimony that voting is polarized between Latino and white voters.

South Dakota

Native American voters in *Bone Shirt v. Hazeltine* challenged a 2001 South Dakota legislative districting plan.[25] The district court concluded that "substantial evidence, both statistical and lay, demonstrates that voting in South Dakota is racially polarized among whites and Indians." In addition, "the white majority in District 26 'votes sufficiently as a bloc to enable it… to usually defeat the [Indian] preferred candidate.'"[26] The district court ruled that the redistricting plan violated the VRA and the State was ordered to redraw district lines in compliance with Section 2.

Texas

As discussed later in this chapter, federal courts found that racially polarized voting exists throughout Texas in finding that Texas's 2003 congressional redistricting plan and 2011 congressional, State House, and State Senate plans violated the VRA.

State-Hired Expert Findings of Continuing Racial Polarization

It is not only courts that acknowledge the existence of racially polarized voting; state-hired experts have conducted analyses of racial bloc voting and also found that racially polarized voting persists in other states.

Arizona

In 2011, Harvard University Professor of Government Gary King and mapping consultant Ken Strasma were hired by the Arizona Independent Redistricting Commission to conduct an analysis of racially polarized voting in Arizona. King and Strasma found that racially polarized voting continues to exist in multiple legislative districts in the State.[26a]

Alaska

At the request of the Alaska Redistricting Board, voting rights and redistricting expert Dr. Lisa Handley conducted an analysis of voting patterns by race in recent Alaska elections. Dr. Handley found that racially polarized voting is increasing in Alaska. According to Dr. Handley, "voting was more polarized in Alaska this past decade than in the previous decade."[26b]

California

University of Washington Professor of Political Science Matt Barreto and counsel for the California Citizens Redistricting Commission, the official redistricting body in California, found that racially polarized voting continues to exist in California. Specifically, Dr. Barreto stated that "there was strong evidence of racially polarized voting with respect to Latinos and non-Latinos in Fresno, Orange, San Diego, Riverside, and San Bernardino Counties."[26c] Dr. Barreto also found racially polarized voting with regard to Latinos, African Americans, and Asians in Los Angeles County.

Kansas

In 2012, Dr. Handley was hired by the Kansas Legislative Research Department to conduct an analysis of racial bloc voting in elections during 2008 and 2010. Her research revealed that Kansas continues to wrestle with the issue of racially polarized voting.[27] During her study, Dr. Handley examined 14 statewide and legislative elections in Kansas that included a minority candidate. Of the 14 elections that Dr. Handley examined, she found that the majority of the contests (9 of 14) showed trends of racially/ethnically polarized voting: "minority and white voters clearly supported different candidates."[28]

Other Expert Findings of Increasing Racial Polarization in Voting in a State or Region

The phenomenon of racially polarized voting not only continues to exist; many experts have recognized a trend of increased polarization. During the most recent VRA reauthorization proceedings, Congress heard testimony about increasing polarization in Southern jurisdictions. The House Report documenting those proceedings notes that "Testimony presented indicated that 'the degree of racially polarized voting in the South is increasing, not decreasing… [and is] in certain ways re-creating the segregated system of the Old South.'"[29]

Similarly, David Bositis of the Joint Center for Political and Economic Studies stated that

> **[F]ollowing the election of President Barack Obama, many political observers—especially conservative ones—suggested that the United States is now a post-racial society. Three years later, in the region of the country where most African Americans live, the South, there is strong statistical evidence that politics is re-segregating, with African Americans once again excluded from power and representation.[30]**

At the National Commission for Voting Rights hearing held in Nashville, Tennessee, Professor Sekou Franklin of Middle Tennessee State University testified about increasing racially polarized voting in the State. He testified that African-American and white voters became 25 percent more polarized between the 2000 and 2012 presidential elections and further noted that in the 2007 Nashville mayoral race, the African-American candidate received 80 percent of African-American votes while only receiving 11 percent of white votes.[31]

Sekou Franklin, Ph.D., Professor of Political Science at Middle Tennessee State University, testified about racially polarized voting at the NCVR Nashville regional hearing. PHOTO CREDIT: JOSEPH GRANT

DOJ Findings of Racially Polarized Voting in Statewide Redistricting Plans

In addition to federal court findings of racially polarized voting and expert reports on the presence of racially polarized voting, there have been numerous DOJ objections that note the presence of racially polarized voting as a reason for denying preclearance for a statewide redistricting plan in a formerly covered jurisdiction, including the following:

Arizona

DOJ objected to the 2001 legislative redistricting plan. In the objection letter, DOJ noted that Arizona provided insufficient evidence to show that voting was not racially polarized. As such, Arizona failed to prove that a decrease in the number of majority-minority districts would not be retrogressive.[32]

Florida

In 2002, DOJ objected to a redistricting plan for the State House of Representatives insofar as it affected the State's covered counties.DOJ found that Hispanic voters support Hispanic candidates but Anglo voters do not.[33]

Louisiana

DOJ objected to a 1996 congressional redistricting plan in Louisiana. The objection letter noted that "in… interracial contests, black voters overwhelmingly supported the black candidate and white cross-over was minimal." DOJ concluded: "In light of the pattern of racially polarized voting that appears to prevail in elections in the State, Act No. 96 [the redistricting plan] would appear to provide no realistic opportunity for black voters to elect a candidate of their choice outside the New Orleans area."[34]

South Carolina

South Carolina submitted a State Senate redistricting plan in 1997 for preclearance, and the DOJ objected. According to the objection letter, there were clear findings of racially polarized voting. The letter noted, "In the context of the racially polarized voting patterns that the court found to exist, see Smith, 946 F. Supp. at 1202, these reductions [in black voting age population] will significantly hinder black voters' electoral opportunities in these districts."[35]

Texas

In 2001, DOJ objected to the proposed State House redistricting plan. The objection letter found racially polarized voting in those elections.[36]

Greater Racially Polarized Voting in the Formerly Covered Jurisdictions than in Non-Covered Jurisdictions

In *Northwest Austin Municipal Utility District No. One v. Holder*,[37] several prominent academics authored an amicus brief that included, among other things, an analysis comparing the degree of support Barack Obama received from white voters in covered and non-covered jurisdictions in the 2008 general election. According to an exit poll, 26 percent of white voters supported Barack Obama in covered states compared to 48 percent white voters in non-covered states.[38] Moreover, the six states with the lowest percentage of whites voting for Obama were fully covered by Section 5 at the time: Alabama (10 percent), Mississippi (11 percent), Louisiana (14 percent), Georgia (23 percent), South Carolina (26 percent), and Texas (26 percent).[39] The five states where Obama received the lowest levels of white support are among the six states where African Americans make up the greatest percentage of the population.[40] The county-level regression analysis showed similar results: Obama received the estimated support of 24 percent of white voters in counties formerly covered by Section 5 compared to 46 percent of white voters in non-covered counties.[41]

Similarly, in 2005, the National Commission on the Voting Rights Act received testimony from Dr. Richard Engstrom, a noted expert on the issue of racially polarized voting, who has testified on behalf of the federal government, state, and local governments, and private parties. Dr. Engstrom stated that based on recent analyses he had done, voting was racially polarized throughout Louisiana, South Carolina, Georgia, Florida, Alabama, North Carolina, and Texas.[42]

The presence of racially polarized voting is the "evidentiary linchpin" of a successful vote dilution claim. Federal courts, DOJ (in its administrative review function), and several analysts have demonstrated that voting remains polarized in many areas of the country, and particularly in the states that were covered by Section 5. Given this persistent trend, minorities are likely to continue finding themselves subject to election schemes and redistricting plans that limit their ability to fully participate in the electoral process.

III. AT-LARGE AND MULTI-MEMBER METHODS OF ELECTION AND RELATED PRACTICES DILUTE MINORITIES' VOTING STRENGTH

Introduction

As was detailed at the beginning of this Report, vote dilution schemes have taken many forms over the years. The use of at-large elections and multi-member districts remains one of the common vote dilution schemes. The Supreme Court has explained that

> **At-large voting schemes and multimember districts tend to minimize the voting strength of minority groups by permitting the political majority to elect all representatives of the district. A distinct minority, whether it be a racial, ethnic, economic, or political group, may be unable to elect any representatives in an at-large election, yet may be able to elect several representatives if the political unit is divided into single-member districts. The minority's voting power in a multimember district is particularly diluted when bloc voting occurs and ballots are cast along strict majority-minority lines.**[43]

In an at-large or multi-member district system, all voters in the jurisdiction vote for all of the seats on a governmental body for that jurisdiction; if there are five seats on the county council, for instance, each voter is able to cast a vote for all five seats. At-large elections and multi-member districts are not *per se* a violation of the Constitution or of Section 2 of the VRA.[44] Rather, it is only when at-large elections and multi-member districts are used *and voting is also racially polarized* that these methods of election can dilute minority voting strength and violate Section 2. When voting is racially polarized in at-large and multi-member systems, the majority will be able to elect all of its candidates of choice and the minority will not be able to elect any.[45] Even if the polarization is "less than absolute," at-large and multi-member systems can still severely inhibit the ability of minorities to elect their candidates of choice.[46]

There are several other election practices that can dilute minority votes when used where voting is racially polarized. One such practice is a majority vote requirement in the context of at-large or multi-member elections, which requires that a candidate garner a majority—not simply a plurality—of the votes in order to win. If the white majority splits its votes among many candidates, it is possible that a minority-preferred candidate may win a plurality. If there is a majority vote requirement and a runoff is necessary, however, the minority candidate will not win in a racially polarized context.

Another practice that can dilute minority voting strength if voting is racially polarized is the prevention of "single-shot" or "bullet" voting in at-large or multi-member elections. Single-shot voting is only possible in contests where multiple seats are open and top vote-getters fill the available seats. When a voter "single-shoots" he has the opportunity to vote for multiple

candidates but chooses to cast only one vote in order to concentrate support for his preferred candidate. "Single-shot voting enables a minority group to win some at-large seats if it concentrates its vote behind a limited number of candidates and if the vote of the majority is divided among a number of candidates."[47] Single-shot voting has often led to the election of a minority-preferred candidate where voting is racially polarized, though it does require that minority voters forgo their say over the other candidates for the office in question.[48]

One anti-single-shot device is the "full-slate rule," wherein voters are required to cast all of their available votes for an office (or their ballots will be invalidated). A second is a numbered place system, wherein each candidate must run for a specific place (1, 2, 3, etc.) rather than against all of the candidates.[49] Much like numbered place systems, residency districts prevent single-shot voting by restricting candidacy for a position to individuals who live in a certain district, even though voters from all districts will choose among the candidates for that district. Both numbered place systems and residency districts also tend to reduce the number of candidates in a contest, which makes it less likely that majority support will be divided and that a minority candidate will be able to win with a plurality of votes. In a racially polarized setting, any of these devices may prevent election of a minority-preferred candidate.[50]

Many current attempts to dilute the voting power of minorities are reactions to changes in the location and size of minority populations. What follows are several examples that provide an overview of the types of vote dilution cases from the very recent past.

Overview of successful Section 2 challenges and Section 5 objections to at-large and multi-member methods of election, 1995 to present[51]

Of the cases brought between 1995 and June 2014 under Section 2 of the VRA in which plaintiffs have been successful (excluding cases regarding bilingual requirements), the vast majority—over 70 percent—related to methods of election. These cases were brought in 21 different states, including six of the states formerly covered in whole by Section 5. Most of these 21 states had between one and three successful cases related to methods of election, but Georgia had six, Mississippi had seven, and Texas had 78.

In the same time period, 20 voting changes related to methods of election were denied preclearance under Section 5 of the VRA by the Attorney General. These denials represent a much smaller share of Section 5 denials than the percent of successful Section 2 cases that relate to election methods. The difference in these percentages is illustrative of the different types of problems that Section 2 and Section 5 are able to address most effectively. The 20 preclearance denials were spread out among jurisdictions in nine different states, though there were four denials for jurisdictions in South Carolina and five denials for jurisdictions in Texas. There was only one preclearance denial for a state-level method of election: in 2010,

the Attorney General denied preclearance to Mississippi for a majority vote requirement for certain county boards of trustees and boards of education.[52]

Changing to At-Large Elections as Minority Groups Grow

In certain areas of the country, the minority population has markedly increased its share of the overall population over the last several decades. In some places, as the minority population grew, jurisdictions changed their method of election from single-member districts—through which the minority group may have been able to elect a candidate of choice—to at-large elections where the minority group's votes would be diluted. In each of the following examples, a Section 2 challenge resulted in the restoration of single-member districts several years after a jurisdiction changed to at-large elections.

United States v. Benson County, North Dakota

In March 2000, the United States and Benson County, North Dakota ended litigation by entering into a consent decree in which the County admitted that its at-large method of electing its five County Commissioners violated Section 2 of the VRA. Prior to 1992, the members of the Benson County, North Dakota Board of Commissioners had been elected from single-member districts.[53] Between the 1980 census and the 1990 census, the Native American population in Benson County grew as a share of the County's total population. In 1980, Native Americans constituted 29.2 percent of the County's total population;[54] by 1990 they had grown to be 38.3 percent of the County's total population and 29.3 percent of the voting age population.[55] As of the 1990 census, two of the districts for the County Commission were majority Native American.[56] In 1992, the county changed its method of electing the County Commissioners from single-member districts to at-large.[57] No Native American was elected to the County Commission under the at-large method of election.[58]

In March 2000, the United States filed suit against Benson County, alleging that the at-large method of electing county commissioners, adopted after the Native American share of population increased, violated Section 2 of the VRA.[59] The district court entered a consent decree four days later in which Benson County admitted that the at-large method of elections for the County's Commissioners violated Section 2 of the VRA.[60] The consent decree provided that Benson County would devise a new single-member district voting plan including two majority-Native American districts if they could be constitutionally drawn.[61]

United States v. Osceola County, Florida

In 2006, a U.S. district court in Florida held that Osceola County's method of electing its five-member County Commission caused a dilution of Hispanic votes in violation of Section 2 of the VRA.[62] The total population of Osceola County had increased dramatically over the previous decades, and the percentage of the population that is Hispanic had also increased

dramatically. In 1980, Hispanics represented only two percent of the County's population; by 2000, Hispanics made up almost 30 percent of the County's population.[63] Additionally, the Hispanic population, as a portion of all registered voters in the County, grew from about 20 percent in 2000 to almost 31 percent in 2006. As the Hispanic population grew, leaders in the Latino community began to express an interest in political representation at the county level, but Latino candidates had not been successful in getting elected. In 1991, the Osceola County Hispanic American Association requested that the County Commission change the election system from at-large to single-member districts.[64] A public referendum to change to single-member districts passed in the 1992 election, with 57 percent of voters in favor. Less than two weeks later, efforts began to return the system to at-large. The 1996 election was conducted under a single-member district system, but included a referendum for a return to at-large elections.[65] A Hispanic candidate was elected from a single-member district in the 1996 election, but the referendum to return to at-large elections also passed.[66] Members of the Hispanic community continued to advocate for single-member districts, but the County Commission was not responsive to their requests. Hispanic candidates also continued to run unsuccessfully for County Commission.[67]

In 2005, the United States sued Osceola County alleging that the at-large method of electing the County Commissioners violated Section 2 of the VRA. The defendants did not dispute that the second and third *Gingles* preconditions were satisfied (i.e., that Hispanics in the county were politically cohesive and that white voters generally voted in a bloc to defeat minority candidates).[68] After a trial, the district court found that the first *Gingles* precondition was also satisfied, and that, under the totality of the circumstances, the County's at-large method diluted the voting strength of Hispanics in violation of Section 2. In its analysis of the totality of the circumstances, the court relied on the extent of racially polarized voting; the history of a lack of success by Hispanic candidates at the polls (other than when the County employed a single-member plan); the socioeconomic disparities between Hispanics and non-Hispanics in the County; and a history of discrimination against Hispanics in the County, including discrimination at the polls in the 2000 election when Hispanics "were turned away without being allowed to vote, refused assistance, forbidden to use their own interpreters, asked for multiple forms of identification (unlike non-Hispanic voters), and treated in a hostile manner by poll workers."[69]

The court also noted that several of Osceola County's election practices—including the requirement of a runoff in primary elections and Commissioners' residency districts—further enhanced opportunities for discrimination and contributed to the lack of success of Hispanic candidates.[70]

Jeff Wice, Fellow at the Jaeckle Center at the SUNY Buffalo Law School; Susan Lerner, Executive Director of Common Cause New York; Aunna Dennis, National Coordinator for the Legal Mobilization Project at the Lawyers' Committee for Civil Rights Under Law; DeNora Getachew, Campaign Manager and Legislative Counsel at the Brennan Center for Justice; and Dan Kolb, Co-Chair of the New York State Bar Association's Special Committee on Voter Participation and Lawyers' Committee board member, answered questions at the NCVR New York City regional hearing. PHOTO CREDIT: CHRIS FIELDS

Refusal to Change to Single-Member Districts as a Minority Population Increases

In some areas of the country where the minority population has grown as a share of the total population, minority groups have advocated for a change from an at-large system in order to increase the chances of electing a candidate of choice. Jurisdictions have staunchly refused to change to a more racially-fair alternative and have needed to be compelled by court order to do so.

United States v. Village of Port Chester, New York

In January 2008, a U.S. district court found that the at-large method of election for the six-member Board of Trustees of the Village of Port Chester, New York violated Section 2 of the VRA by impermissibly diluting the voting strength of Latinos.[71] From 1990 to 2000, the Latino population of Port Chester had grown 73 percent, and, as of the 2000 census, Latinos constituted 46.2 percent of the village's population, while 42.8 percent of the population was white and 6.6 percent was non-Hispanic black.[72] The citizen voting age population was 65.5 percent white, 21.9 percent Hispanic, and 8.9 percent non-Hispanic black.[73] Despite the increase in and substantial size of the Latino population of Port Chester, no Latino had ever been elected to the Board of Trustees (or, as of the time of the trial in the case, to any elected office in Port Chester).[74]

In finding a violation of Section 2, the court's discussion included the history of official discrimination in Port Chester Village and Westchester County against Latinos, including disparate treatment of Spanish-speaking voters and failure to provide sufficient Spanish language assistance at the polls; the nominating process for getting on the ballot, which favored those with political ties or institutional support, which most Latinos lacked; the lower average levels of income and formal education for Latinos in Port Chester; and racial appeals in campaigns in Port Chester, including a flyer stating, "The Hispanics are running the show already."[75]

The Village of Port Chester proposed cumulative voting—a system where every voter is allotted as many votes as there are candidates and may give all to one candidate or varying numbers to several candidates—as a remedy, and the court accepted a plan of at-large elections with cumulative voting. In 2010 the Village of Port Chester elected its first Latino member of the Board of Trustees.[76]

United States v. Blaine County, Montana

> **"Official discrimination against American Indians, racially polarized voting, voting procedures that enhanced the opportunities for discrimination against American Indians, depressed socioeconomic conditions for American Indians, a tenuous justification for [the] at-large voting system. While Blaine County argued that none of this existed in their voting system, the record was clear to the contrary."**
>
> *William 'Snuffy' Main at the NCVR Rapid City regional hearing*

In 2002, a U.S. district court found that Blaine County, Montana's at-large system for electing its three-member County Commission violated Section 2 of the VRA.[77] From 1980 to 2000, the share of the population of Blaine County that was Native American had increased dramatically. In 1980, Native Americans made up 31.7 percent of the population of Blaine County;[78] as of the 1990 census, that number had increased to 39.6 percent.[79] By the time of the 2000 census, Native Americans comprised 45.2 percent of the total population and 38.8 percent of the voting age population of Blaine County (with 80 percent of the Native population concentrated on the Fort Belknap Reservation), yet no Native American had ever been elected to the County Commission.[80] In 1999, the United States sued Blaine County, alleging that the at-large voting system for electing County Commissioners violated Section 2 of the VRA. In concluding that the at-large system violated Section 2, the court found that there was a history of official discrimination against Native Americans, racially polarized voting, voting procedures that enhanced the opportunities for discrimination against Native Americans, and a tenuous justification for the at-large voting system.[81] Blaine County proposed a remedial plan with three single-member districts, which the district court approved. In 2002, a tribal member, Delores Plumage, was elected to the County Commission.[82]

United States v. City of Euclid

Until the late 1970s, the city of Euclid was a predominantly white suburb of Cleveland. In the 1970s, African Americans represented only half of one percent of the city's total population. The African-American population grew in the 1980s and 1990s, while the white population decreased. As of the 2000 census, Euclid's African-American voting age population was 27.8 percent of the total population, yet none of Euclid's four wards had a majority of African Americans of voting age.[83] The nine-member City Council was elected as follows: four members were elected from single-member districts, four were elected at-large from numbered posts, and one was elected at-large to serve as president of the council.[84] African-American candidates had run for city council ten times since 1981, but lost each time. No African-American had ever been elected to the City Council, School Board or as Mayor of Euclid.[85]

In 2008, the United States filed a suit alleging that Euclid's method of electing its City Council resulted in the dilution of African-American voting strength in violation of Section 2. The court agreed that Euclid's method of electing its City Council violated Section 2 based on racially polarized voting, a history of discrimination in several areas including housing and education, and a persistent lack of responsiveness to the needs of the African-American community by elected officials.

In response, the city divided Euclid into eight single-member districts, while retaining the at-large Council President position. After implementation of the plan, an African American was elected to the Euclid City Council from one of the majority-minority districts established by the remedial plan.[86] Since then, a second African American has been elected to the Euclid City Council.

Entrenched Opposition to Minority Representation

Other cases of minority vote dilution, whether or not they follow an increase in the minority group's share of the population, demonstrate entrenched opposition to minority representation. From refusing to submit a single-member plan as ordered by a court, to attempting to return to an at-large system after having changed to a single-member system, to refusing to settle cases where the Section 2 violation is so clear that it had been decided on summary judgment, there are several examples of this entrenched opposition, including the following.

Large v. Fremont County, Wyoming

In Wyoming, a U.S. district court found in 2010 that Fremont County's at-large system for the election of County Commissioners violated Section 2 of the VRA by impermissibly diluting the voting strength of Native American voters.[87] Fremont County is home to the Wind River Indian Reservation, which includes Eastern Shoshone and Northern Arapaho Tribes.[88] As of the 2000 census, the population of the County was about 20 percent Native American.[89] Yet prior to the filing of *Large*, no Native American had ever been elected to the five-seat County

Commission. The district court found that discrimination against Indians in Fremont County was "ongoing, and that the effects of historical discrimination remain[ed] palpable[,]" and the court rejected "any attempt to characterize this discrimination as being politically, rather than racially, motivated."[90] The evidence of ongoing discrimination included the use of racial slurs against Native Americans, including signs on stores that said "No Dogs or Indians Allowed"; Native Americans being followed around in stores, ignored by sales people, or served only after whites had been served; disparate treatment in the criminal justice system; and even a comment by a County Commissioner (before he was in office) that, "I hate the [expletive] Indians."[91] Additionally, when Native Americans had run for office in Fremont County, the campaigns against them included racial appeals such as ads reminding voters that a candidate was "an enrolled member and that he would be voting on water issues," and a warning not to vote for one Native American candidate because if elected he "was going to give [a town in Fremont County] back to the Indians."[92] After *Large* was filed (but before the case concluded), one Native American was elected to the County Commission. During her campaign, she voiced support for at-large elections, which is a position that the white majority would likely favor.[93]

> **"The issue is, we weren't being represented and our population is 20 percent of the county… [and] our population is growing."**
>
> *Gary Collins, Northern Arapaho Tribal Liaison, at the NCVR Rapid City regional hearing*

After finding that the at-large plan violated Section 2, the district court ordered the County to propose a plan to elect Commissioners by district rather than at-large.[94] Despite this order, the County proposed another plan that negated the voting power of Native Americans. This hybrid plan consisted of two districts: one single-seat majority-Native American district, with 19.2 percent of the county's population, and one four-seat majority white district covering the rest of the county.[95] Candidates from the majority-Native American district would be required to live in the district and would be elected only by voters in that district; the four remaining seats would be elected by the remaining population using an at-large scheme.[96] Essentially, members of the white majority would be allowed to vote for four commissioners while Native Americans would be allowed to vote for only one. The district court found that the plan "perpetuat[ed] the separation, isolation, and racial polarization in the County, guaranteeing that the non-Indian majority continues to cancel out the voting strength of the minority."[97] The district court rejected the county's proposed plan and ordered a single-member district plan be implemented.[98]

Cuthair v. Montezuma-Cortez School District

In 1998, a district court in Colorado found that the at-large elections of the six-member Board of Education for the Montezuma-Cortez School District diluted Native American voting strength in violation of Section 2 of the VRA.[99] The plaintiffs, members of the Ute Mountain Ute Tribe and Southern Ute Tribe, had originally brought suit in 1989 challenging the at-large

method.[100] In 1990, the district court entered a consent decree establishing a majority Native American district ("District D") for the 1991 and 1993 school board elections; the remaining five positions on the School Board were still elected at-large. The consent decree also included the unusual provision that if no Native American candidate (or candidate endorsed by the Tribal Council) was elected for District D in 1991 or 1993, the defendants would have a year in which they could request that the court allow them to restore at-large elections for all school board positions.[101] When no Native American was elected to District D in 1991 or 1993, the defendants sought permission to resume at-large elections.

A different district court judge determined that the consent decree was unenforceable, and held that the at-large elections violated Section 2 of the VRA. The court reviewed an extensive history of "pervasive discrimination and abuse at the hands of the government" suffered by Native Americans in the United States and specifically in Colorado. That history, which includes government seizure of Ute land, a massacre of Indians in eastern Colorado, and decades of official policies of coercive assimilation, led to dire social and economic situations for Native Americans.[102] The court also found that voting in the county was racially polarized, that the historical use of at-large elections presented the opportunity for discrimination against minority groups in Colorado and the County, that Native Americans in the County bore the effects of discrimination, and that no Native American had been elected to a non-tribal office in the County. The district court ordered the parties to submit appropriate districting plans for future elections.

Georgia State Conference of the NAACP v. Fayette County, Georgia

In 2013, the U.S. District Court for the Northern District of Georgia found that Fayette County, Georgia's at-large method of electing members of the Board of Commissioners and Board of Education diluted the voting strength of African-American voters in violation of Section 2 of the VRA.[103] The court made this finding on a motion for summary judgment—meaning there was not even a trial because the court found that the key facts were undisputed. Indeed, some of the Board of Education defendants had already conceded that the at-large election of its members violated Section 2. This case is an example of *both* a refusal to change methods of election when a minority population increases and entrenched opposition to minority representation.

The percentage of the population of Fayette County that is African-American had almost doubled between 2000 and 2010. As of the 2000 census, African Americans comprised 11.5 percent of the County's population.[104] By the time of the 2010 census, African Americans comprised 20.1 percent of the population and 19.5 percent of the voting age population, yet no African-American candidate had ever been elected to the five-member Board of Commissioners or five-member Board of Education.[105] Five African-American candidates had run for the Board of Education and seven had unsuccessfully run for the Board of Commissioners.

> **"Elections in Fayette County show a clear pattern of racially polarized voting. Although, Black voters are politically cohesive, bloc voting by other members of the electorate consistently defeats black-preferred candidates."**
>
> *Stated Rep. Virgil Fludd at the NCVR Georgia hearing.*

The members of the County's Board of Commissioners and Board of Education served staggered four-year terms and had to reside in the district from which they were elected, though the elections were at-large.[106] No African American had ever been elected to either the Board of Commissioners or Board of Education, and only one African American had ever been elected to a county-wide office.[107]

In arguing against the plaintiffs' motion for summary judgment, Fayette County did not even dispute the second and third *Gingles* preconditions.[108] The court found that the first precondition was satisfied and that the totality of the circumstances demonstrated vote dilution. In addition to finding a history of racial discrimination and racially polarized voting, the court also noted that election practices enhanced opportunities for discrimination. First, the County split its Commissioners into five individual contests and used numbered posts, eliminating the opportunity for single-shot voting. Second, the County had a majority-vote requirement, which can also dilute the voting strength of minority voters.[109]

Case Spotlight
Charleston County, South Carolina

In 2003, a district court found that the at-large method of election of the members of the County Council of Charleston County, South Carolina, impermissibly diluted minority voting strength in violation of Section 2 of the VRA. As of the 2000 census, African Americans comprised 34.3 percent of Charleston County's total population and 30.6 percent of its voting age population.[110] Only one of the nine members of the County Council was African-American, and he was not a minority-preferred candidate. At the time, Charleston County was one of only three counties in South Carolina that elected its entire County Council at-large, and was the only county in South Carolina to do so where whites were a majority of the population.[111] In July 2002, the court granted summary judgment to the plaintiffs on the three *Gingles* preconditions, meaning that the facts upon which the court relied to determine if the preconditions had been met were undisputed. The trial that followed thus focused on the totality of the circumstances, and the plaintiffs prevailed.

In the court's discussion of the totality of the circumstances in its 2003 opinion, it noted the "egregious" racial polarization in voting in Charleston County; that only one African-American candidate had ever won a county-wide election for any of the seven single-seat offices (including probate judge, sheriff, and auditor); and the vast socioeconomic disparity between African Americans and whites, with 34.2 percent of African Americans in the County living below the poverty level, compared with 7.9 percent of whites.[112] The court found that the depressed socioeconomic status of African Americans was "a direct legacy of Charleston County's history of official discrimination" and "makes it more difficult presently for Charleston County's African-American citizens to participate in the political process and elect candidates of choice."[113] Additionally, the residency districts, staggering of terms, and primary nominating system meant that there was essentially a majority vote requirement, as all contests were either single-seat or two-seat contests with only two viable candidates per seat (one Democrat, one Republican). Such a situation also denied minority voters the opportunity to exert influence through single-shot voting.[114]

The court also found "significant evidence of intimidation and harassment" of African-American voters at predominantly African-American polling places; the Charleston County Circuit Court had even issued a restraining order against the Election Commission to cease the ongoing interference with the ability of African Americans to vote.[115] There was also evidence that the right of African-American voters to receive assistance had been violated, with white poll managers asking questions such as, "Why do you need assistance?. . . [C]an't you read and write?" and "[Y]ou know how to spell your name, why can't you just vote by yourself?"[116]

After finding a violation of Section 2, the district court ordered single-member districts to replace the at-large system. In the first election by districts, in 2004, African-American voters elected three African-American council members, all of whom were minority-preferred candidates.[117] The County appealed the case first to the Fourth Circuit Court of Appeals and then to the U.S. Supreme Court. The appeals court affirmed the district court, and the Supreme Court did not hear the case.[118] As a result, Charleston County spent more than $2 million defending its discriminatory election system.[119] The County was ordered to pay several hundred thousand dollars in attorneys' fees to the private plaintiffs.

This case also provides an illustration of the differences between Section 2 and Section 5. Like the County Council, the Charleston County School Board has nine members. At the time of the trial regarding the County Council's method of election, a majority of the School Board, which was elected by a different method, was African American.[120] In 2003, while the case regarding the County Council was on appeal, the South Carolina General Assembly, led by legislators from Charleston County, enacted a law changing School Board elections from nonpartisan to partisan. DOJ objected to the change on the ground that it would decrease minority voting strength, noting, among other things, that it eliminated the opportunity for single-shot voting.[121] The Section 5 process thus prevented the implementation of a discriminatory voting change that could have taken several years and millions of dollars to invalidate in a Section 2 lawsuit.

IV. REDISTRICTING PLANS

There are three ways that redistricting plans can dilute minority voting strength. The first is through malapportionment, which the Supreme Court recognized in *Reynolds v. Sims* to be an unconstitutional form of vote dilution,[122] as discussed above. When minority voters are in an overpopulated district, their votes are being diluted. The other two methods are fragmenting (or "cracking") the minority population into different districts or packing it into a single district. The Supreme Court described these principles in *Voinovich v. Quilter*:

> **In the context of single-member districts, the usual device for diluting minority voting power is the manipulation of district lines. A politically cohesive minority group that is large enough to constitute the majority in a single-member district has a good chance of electing its candidate of choice, if the group is placed in a district where it constitutes a majority. Dividing the minority group among various districts so that it is a majority in none may prevent the group from electing its candidate of choice: If the majority in each district votes as a bloc against the minority candidate, the fragmented minority group will be unable to muster sufficient votes in any district to carry its candidate to victory.**
>
> **This case focuses not on the fragmentation of a minority group among various districts but on the concentration of minority voters within a district. How such concentration or "packing" may dilute minority voting strength is not difficult to conceptualize. A minority group, for example, might have sufficient numbers to constitute a majority in three districts. So apportioned, the group inevitably will elect three candidates of its choice, assuming the group is sufficiently cohesive. But if the group is packed into two districts in which it constitutes a supermajority, it will be assured only two candidates. As a result, we have recognized that "[d]ilution of racial minority group voting strength may be caused" either "by the dispersal of blacks into districts in which they constitute an ineffective minority of voters or from the concentration of blacks into districts where they constitute an excessive majority."[123]**

The following discussion sets forth examples of all three and how how malapportionment, cracking, and packing have been used to dilute minority voting strength.

Malapportionment

The example of a recent case in Montana involving Native American voters demonstrates how malapportionment is used to dilute minority voting strength.

In August 2013, the American Civil Liberties Union filed a federal lawsuit against the Board of Trustees of Wolf Point, School District 45A, for creating a multimember districting plan that gave residents in a predominantly white voting district vastly more voting power than those in a majority Native American voting district.[124] The Wolf Point School District, located in north-eastern Montana, resides entirely in the Fort Peck Indian Reservation.[125] Wolf Point School District 45A was created with the merger of High School District 45 and Elementary School District 3.[126] When the merger took place, Wolf Point assigned five electable trustee positions to District 45 and three to District 3.[127] District 45 is a majority Native American district.[128] In April of 2014 the Court approved a consent decree finding that the Wolf Point School Board districts were malapportioned in violation of the 14th Amendment.[129] The consent decree recognized that, with respect to District 45, the ideal population for a district electing five of the eight Board members should be 2,897, as opposed to the 4,205 found under the existing plan.[130] The consent decree also recognized that, with respect to District 3, the ideal population for a district electing three members of the Board should be 1,738, rather than the 430 that it actually had.[131] Through the consent decree the School District agreed to redraw voting areas for board elections and to eliminate two seats from District 3 for the 2014 election.[132] The School District also agreed to create five single-member districts with an approximately equal number of residents and one at large position.[133] Each of the new single-member districts will have populations that vary no more than 1.54 percent.[134]

Cracking

The following examples demonstrate how jurisdictions have sought to dilute the minority voting strength by cracking cohesive effective minority districts.

Arizona: Southwest Phoenix and Central and Southwest Tucson, 2002

In May 2002 in Arizona, the United States Department of Justice (DOJ) objected under Section 5 of the Voting Rights Act (VRA) to the proposed 2001 legislative redistricting plan for the state, finding that southwest Phoenix voters from the existing House District 22 would "lose their present ability to elect their candidate of choice." In its proposal, Arizona sought to split the existing District 22 between two districts, Districts 13 and 14. The resulting proposed districts would have Latino voting age populations of 51.2 and 50.6 percent, respectively, a significant reduction from the 65 percent found under the old District 22. DOJ noted that Arizona districts with Latino voting age population percentages in the low 50s had not historically permitted Latino voters "to elect a candidate of their choice." In central and southwest Tucson, the DOJ also objected to proposed District 29. Proposed District 29 was created by cracking the previous Districts 9, 10, 11, and 14, and would have had "a Hispanic voting age population of 45.1 percent." In particular the DOJ noted that the majority of proposed District 29's population came from the previous "District 10, which had a Hispanic

voting age population of 55.3 percent," and that Arizona did not present credible evidence allowing DOJ to conclude that the drop of eight percentage points in the Hispanic voting age population would result in the "continued ability of voters in Proposed District 29 to elect candidates of their choice." More generally, the DOJ determined that the proposed plan would result in a net loss of three districts in which minority voters could elect candidates of choice.[135]

Virginia: Northampton County, 2001-03

Prior to its 2001 redistricting, the board of supervisors for Northampton County, Virginia had two majority black supervisor districts where African Americans had elected their candidates of choice for the last decade.[136] During the next several years, the county repeatedly submitted retrogressive redistricting plans and associated voting changes to DOJ for preclearance.

First, in September 2001, DOJ objected to the redistricting plan for the board of supervisors, as well as changes to the method of election for the board of supervisors in Northampton County.[137] Under the existing method of election, which included six single-member districts, two African-American supervisors, both from majority-black districts (and a third majority-minority district had previously elected minority candidates), were in office.[138] However, the proposed redistricting plan and change to three two-member districts contained no districts in which minorities constituted a majority of the voting age population. The DOJ cited that one district in the proposed plan would have "a minority voting age population of 48.8 percent."[139] Others would have voting age populations of 39.3 percent and 43.5 percent.[140] The DOJ was not persuaded by the county's argument that these changes were required to include "incorporated towns within single election districts" and to make access to polling places more convenient to voters.[141] In fact the DOJ provided an illustrative six-district plan that addressed these concerns. The illustrative plan was very similar to the benchmark plan already in place. In all, the DOJ concluded that after examining the populations in question the proposed plan would have made it unlikely for the minority community to "elect two, much less, three candidates of choice."[142]

The next year Northampton County submitted a new redistricting plan and DOJ objected to it in May 2003.[143] DOJ again noted that under the existing plan there were three majority-minority (two of them majority African-American) districts.[144] However, "[t]he proposed plan has no district in which black persons constitute a majority of the [voting age population]."[145] Moreover, under the proposed plan, none of the districts had a combined minority voting age population above 52.1 percent, whereas the *lowest* combined minority voting age population among the three existing majority-minority districts was 52.8 percent.[146] The county defended its proposed redistricting plan by arguing that Northampton voters no longer voted on "purely racial grounds."[147] The DOJ disagreed with this view. It cited evidence to the contrary, namely that "[i]n the last ten years, no black preferred candidate has won in a district in

which whites were a majority of the [voting age population] and in the district in which neither blacks nor whites constitute a majority of the total [voting age population], a black-preferred candidate has only won once in the past three elections."[148] Based on this evidence the DOJ determined that even a slight reduction in the voting age population would make it less likely for African Americans to elect candidates of choice.

In October 2003, DOJ objected to the proposed redistricting plan for board of supervisors in Northampton County for a third time. Under the proposed redistricting plan one of the two majority African-American districts would be cracked by reducing its African-American voting age population "from 53.3% to 48.2%, thereby eliminating the ability of black voters to elect their candidates of choice."[149]

Wisconsin: 2012

In 2012, a federal court held that the state of Wisconsin's legislative redistricting act, known as Act 43, violated Section 2 of the VRA, by "improperly diluting the citizen voting age population of Latinos across New Assembly Districts 8 and 9."[150] The defendants sought to rely on voting age population as opposed to citizen voting age population. The defendants had argued that in drawing the districts they had given Latinos 60.5 percent of the voting age population in "New Assembly District 8 and 54.03 percent of the voting age population in New Assembly District 9."[151] However, as the trial unfolded the state conceded that "the relevant measure is citizen voting age population, at least for an ethnic group with as high a proportion of lawful non-citizen residents as Latinos."[152] The defendants also argued that two Latino influence districts would be superior to one majority-minority district.[153] The court was not convinced by either argument. Relying on *Bartlett v. Strickland*,[154] it held that "the creation of influence districts in lieu of a majority-minority district is not on the menu of options for relief."[155] It also held that sacrificing influence in one district for the benefit of another "flies in the face of Section 2's protection against cracking minority populations."[156]

The court noted that "Latinos in Milwaukee are politically cohesive in their voting behavior... [and] voting is racially polarized, such that the majority group can block the Latino candidate from winning."[157] For instance, during trial an expert testified that, in surveying 36 elections since 1989, Latino candidates only had an 11.1% success rate when they "ran against one or more Caucasian, non-Latino candidates..."[158] The court also noted that neither party disputed that "Milwaukee's Latino community bears the socioeconomic effects of historic discrimination in employment, education, health, and other areas, and that its depressed socioeconomic status hinders its ability to participate in the electoral process on an equal basis with other members of the electorate."[159] The court concluded that the plaintiffs are entitled to relief because "Act 43 fails to create a majority-minority district for Milwaukee's Latino population."[160]

Kendra Glover, a paralegal in the office of the General Counsel of the National Association for the Advancement of Colored People who is from Suffolk, Virginia, testified about the redistricting process in her hometown after the 2010 census. On the right is Jean Jensen, former Secretary of the Virginia State Board of Elections and Guest Commissioner at the NCVR Virginia state hearing. PHOTO CREDIT: ROSE CLOUSTON

Packing

The following examples demonstrate how jurisdictions have sought to dilute the minority vote by over-concentrating such voters into one or as few as possible jurisdictions. This is typically done at the expense of minority-influence districts or districts with small or borderline majorities.

Louisiana: City of Plaquemine, Iberville Parish, 2003

In Louisiana, in December 2003, the DOJ objected to a redistricting plan for the City of Plaquemine, in Iberville Parish. In its proposed plan, the City of Plaquemine sought to create two packed districts, by reassigning and therefore reducing the African-American voting age population in a third district. Under the benchmark plan the city had three districts where African-Americans constituted a majority of the voting age population and were able to elect candidates of their choice to office.[161] The proposed packed districts, Districts 2 and 6, would have African-American voting age population percentages of 80.4 and 86.9, respectively, while District 3 would see its African-American voting age population drop to 48.5 percent from the benchmark 51.1 percent.[162] The DOJ determined that the voting age population reduction found in proposed District 3, while small, called into question the ability of African-American voters to elect their candidate of choice. The DOJ also determined that the "reduction in the black voting age population percentage in District 3 was neither inevitable nor required by any constitutional or legal imperative."[163]

Louisiana: City of Ville Platte, Evangeline Parish, 2004

In June 2004, the DOJ objected to a redistricting plan for the City of Ville Platte in Evangeline Parish in Louisiana. In its proposed plan the city sought to pack District B – which was almost 80 percent African-American – with African Americans from District F, and thereby eliminate that district's African-American voting majority by reducing the African-American voting age population to 38.1 percent.[164] The DOJ determined that reassigning voters from District F would have produced a "precipitous drop in black voting strength," which "was not driven by any constitutional or statistical necessity."[165] In fact, the DOJ made clear that the city "provided no evidence to rebut the conclusion" that its efforts were intentionally designed to "retrogress minority voting strength by eliminating the electoral ability of black voters in District F."[166] In its analysis the DOJ found that the African-American population in District F had steadily increased since it was created in 1997 and that census data suggested that African-Americans constituted a majority 55.1 percent of District F's voting age population.[167]

Nebraska: Thurston County, 1997 (Cracking and Packing)

In *Stabler v. County of Thurston*, Native American citizens and organizations filed suit against Thurston County, Nebraska. The plaintiffs claimed that the County's seven member district plan for the County Board diluted Native American voting strength by packing most of the County's Native American population into two voting districts and fragmenting the remaining Native American population into three other districts.[168] The district court found that the plan violated Section 2 and ordered the county to draw a plan with three majority Native American districts,[169] and the Eighth Circuit affirmed.[170] The judgment was left undisturbed on appeal to the Supreme Court.[171]

A Category of its Own: Randolph County, Georgia

Another example of discriminatory conduct that deprived a minority group from electing its candidates of choice, but which defies the categories set forth above, occurred in Randolph County, Georgia.

In September 2006, DOJ objected to the Randolph County Board of Education's proposed reassignment of sitting Board Chair Henry L. Cook from District 5 to District 4.[172] Randolph County is located in the Southwest corner of Georgia. Cook, an African-American, had served on the Randolph County Board of Education since 1993, representing a District that was over 70 percent African-American.[173] The Board of Registrars sought to remove Cook as an Education Board member by simply redrawing the district line around his home and placing him in a new district—one that was over 70 percent Anglo.[174] In so doing, the Board of Registrars was effectively seeking to deprive the district of the ability to elect its longstanding candidate of choice.

Because Cook's property had straddled the line between the two districts, the issue of his residency had been raised previously in 2002. At that time, Superior Court Judge Gary McCorvey, serving as an acting election superintendent, had held a hearing regarding Cook's eligibility status, after it was challenged by an opponent. Judge McCorvey found that "the residence of Henry L. Cook is within the boundaries of such 'new' district five as contemplated by the Laws and Constitutions of both the State of Georgia and the United States of America."[175] Despite this 2002 decision, the three-member Randolph County Board had proceeded to hold a special meeting three years later "for the sole propose of determining anew the proper voter registration location of Mr. Cook and his family members living at his address."[176] The DOJ found it unusual that the Board would revisit an issue "without any intervening change in fact or law, and without notifying Mr. Cook that it was doing so."[177] The DOJ also noted that it was "particularly unusual for officials with no legal training to overturn, in effect, a decision by a judge in order to disturb an incumbent officeholder."[178] In support of its objection the DOJ further cited a "history of discrimination in voting in the County" and that the Board failed to carry its burden in demonstrating that Cook's proposed reassignment to District 4 lacked a "discriminatory purpose."[179]

Case Spotlight
Texas Redistricting Post–2000

Federal courts have found that Texas violated the Voting Rights Act with respect to its 2003 congressional redistricting plan and its 2011 congressional, State Senate, and State House plans. The reviewing courts found that the State repeatedly manipulated district lines to the detriment of minority voters.

In *League of United Latin American Citizens (LULAC) v. Perry*, the Supreme Court held in 2006 that changes to District 23, a Latino-majority district in west Texas, in Texas's 2003 congressional redistricting plan violated Section 2 of the VRA.[180] District 23 was redrawn by the Legislature to protect incumbent Republican Henry Bonilla, who had decreasing Latino support.[181] After his election in 1992, Bonilla's share of Latino support decreased with each election cycle, bottoming out in 2002 when he "captured only 8% of the Latino vote and 51.5% of the overall vote."[182] Bonilla likely prevailed in that election because "88% of non-Latinos voted for him."[183] To protect Bonilla's seat the Texas Legislature divided District 23 by removing half of Webb County and the city of Laredo. At the time, Webb County was 94% Latino.[184] This change alone reassigned 100,000 individuals from Bonilla's district to "another district in which Latinos already controlled election outcomes."[185] The Legislature then added largely Anglo—and Republican—voters from neighboring central Texas.[186] Consequently, the Latino share of the citizen voting age population in District 23 dropped from 57.5 percent before redistricting to 46 percent.[187] The Supreme Court noted Texas's well-documented history of discrimination, and that the diminishing support for Congressman Bonilla indicated a belief among the Latino voters that Bonilla was unresponsive to their needs.[188] The Court also noted that even if the changes were largely motivated by political rather than racial goals, redrawing a district along racial lines to protect an incumbent is not a valid policy justification.[189] The Court observed that Latino voters in District 23 were poised to elect their candidate of choice as "[t]hey were becoming more politically active, with a marked and continuous rise in Spanish-surnamed voter registration."[190] Accordingly, the Court held that the 2003 congressional redistricting plan bore "the mark of intentional discrimination," and the districts in south and west Texas would have to be redrawn to remedy the Section 2 violation.[191]

Undeterred by the Supreme Court's decision, the Texas Legislature went to even greater lengths in its post-2010 redistricting. Deciding to bypass the DOJ preclearance process, Texas filed suit in July 2011 for judicial preclearance of new redistricting plans for the Texas House of Representatives, the Texas Senate, and Congress.[192] All three redistricting plans were denied preclearance by a three-judge panel of the federal district court in Washington D.C.[193] The panel concluded that the State of Texas engaged in intentional discrimination against minority voters in enacting the 2011 State Senate and congressional redistricting

plans, that the State House and congressional plans were retrogressive, and that the State House plan also showed signs of purposeful discrimination.[194]

The case regarding the Senate plan focused on Senate District 10. The existing Senate District 10 (SD 10) was located in Tarrant County, which includes Fort Worth.[195] Evidence from the trial cited by the Court included testimony by the defendant's own expert, Dr. John Alford, who agreed that "the enacted plan 'diminishes the voting strengths of Blacks and Latinos in [SD 10].'"[196] The court also cited testimony by Texas State Senator Rodney Ellis, who explained that:

> **The demolition of District 10 was achieved by cracking the African American and Hispanic voters into three other districts that share few, if any, common interests with the existing District's minority coalition. The African American community in Fort Worth is "exported" into rural District 22—an Anglo-controlled District that stretches over 120 miles south to Falls [County]. The Hispanic Ft. Worth North Side community is placed in Anglo suburban District 12, based in Denton County, while the growing South side Hispanic population remains in the reconfigured majority Anglo District 10.[197]**

This testimony was further supported by a report provided by expert witness Dr. Allan J. Lichtman, who wrote:

> **The state legislature, in dismantling benchmark SD 10 cracked the politically cohesive and geographically concentrated Latino and African American communities and placed members of those communities in districts in which they have no opportunity to elect candidates of their choice or participate effectively in the political process.[198]**

Ultimately, the court denied preclearance "because Texas failed to carry its burden to show that it acted without discriminatory purpose in the face of largely unrebutted defense evidence and clear on-the-ground evidence of cracking minority communities of interest in SD 10."[199]

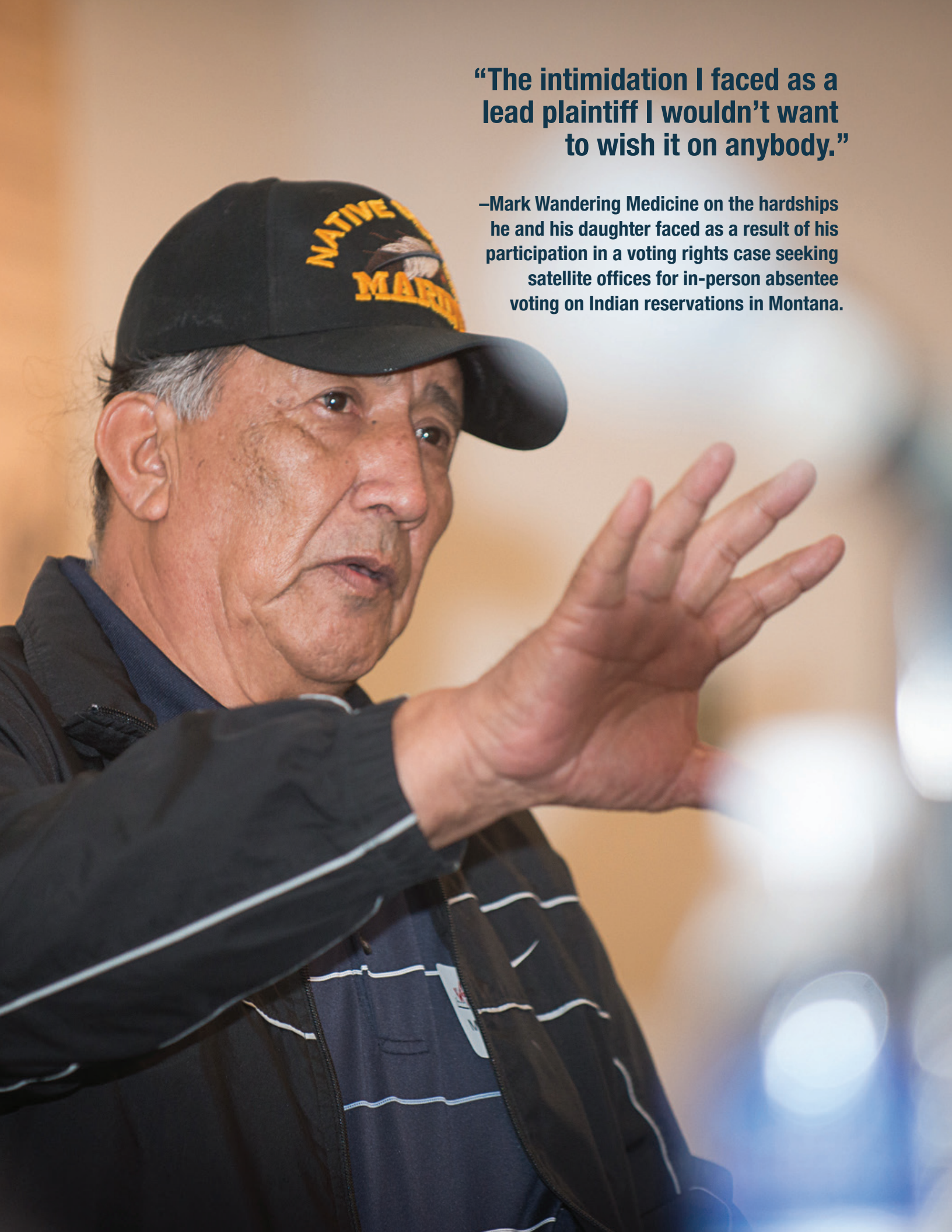
The court's findings of fact detailed other actions taken by the State of Texas to intentionally discriminate against voters on the basis of race.[200] For example, as to the congressional plan, the court made the following findings: (1) Texas grew by 4.3 million people between 2000 and 2010 of which Latinos accounted for 65 percent of the increase, African Americans 13.4 percent and Asian-Americans 10.1 percent;[201] (2) as a result of the growth in population, the state gained four congressional seats;[202] and (3) nonetheless, the number of seats to which minority voters could elect a candidate did not increase (two of the three judges concluded

that this number had decreased by one).[203] In addition, the court noted that the legislature had removed the "economic guts" from the African-American districts, but "[n]o such surgery was performed on the districts of Anglo incumbents."[204]

With regard to the State House redistricting plan, the court did not make formal findings of intentional discrimination, but did conclude that the plan would have a retrogressive effect on minority voters.[205] The court did note, however, that it had been presented with substantial evidence that the State House plan was also motivated by discriminatory intent.[206] For instance, the court noted that "the process for drawing the House Plan showed little attention to, training on, or concern for the VRA."[207] In terms of the process used to create House District 117, the court noted that map-drawers altered it "so that it would elect the Anglo-preferred candidate yet would look like a Hispanic ability district on paper."[208] This was accomplished by using "voting and population data" to distinguish "between minorities who turn out heavily to vote and those who do not …"[209] In this way, districts with large minority populations could be created that would feature "a much smaller number of minority voters."[210] The court found this evidence "concerning because it shows a deliberate, race conscious method to manipulate not simply Democratic vote but, more specifically, the *Hispanic* vote."[211] The court cited the testimony provided by the lead house map-drawer, Gerardo Interiano, which it found "reinforces evidence suggesting map-drawers cracked [voter tabulation districts] along racial lines to dilute minority voting power."[212]

The panel's decision was vacated after the *Shelby County* decision, and after the Texas Legislature enacted new plans. The new congressional and State House plans are being challenged in consolidated Section 2 lawsuits with trial to occur in summer 2014.[213]

Deciding to bypass the DOJ preclearance process, Texas filed suit in July 2011 for judicial preclearance of new redistricting plans for the Texas House of Representatives, the Texas Senate, and Congress. All three redistricting plans were denied by a three-judge panel of the federal district court in Washington D.C. The panel concluded that the State of Texas engaged in intentional discrimination against minority voters in enacting the 2011 State Senate and congressional redistricting plans, that the State House and congressional plans were retrogressive, and that the State House plan also showed signs of purposeful discrimination.



“The intimidation I faced as a lead plaintiff I wouldn’t want to wish it on anybody.”

–Mark Wandering Medicine on the hardships he and his daughter faced as a result of his participation in a voting rights case seeking satellite offices for in-person absentee voting on Indian reservations in Montana.

CHAPTER 6
Access to the Ballot

I. INTRODUCTION

As discussed in Chapter 1, states and their political subdivisions have historically used a variety of tests and devices to prevent minority voters from registering to vote. Since the mid-1990s, a new generation of tactics for limiting minority voters' access to the ballot has emerged. Though these have replaced poll taxes, literacy tests, and other overt mechanisms of the pre-Voting Rights Act (VRA) era, the practices covered in this chapter demonstrate that minority voters, in numerous respects, still confront barriers when trying to register and cast a ballot throughout the country.

Since the mid-1990s, states have curtailed voter registration opportunities by limiting the registration methods that are most accessible to and popular among minority voters, such as community voter registration drives and registration through public assistance agencies. Other states have focused a great deal of energy on burdensome procedures they claim are needed to prevent noncitizens from registering and voting. Despite scant evidence that this is a problem, these states have adopted heightened requirements for proving citizenship in order to register to vote that can pose obstacles for minority voters in particular.

An additional discriminatory device discussed in this chapter is the disenfranchisement of citizens because at some point in time they were convicted of a felony. While felony disenfranchisement laws date back to the 19th century, their impact has grown substantially in recent decades. As discussed below, these laws now deny the right to vote to 2.2 million African Americans nationwide.

Unfortunately, the post-VRA methods of restricting minority voters' access to the ballot go beyond the qualification and registration processes. Voters who have successfully registered are now facing an array of practices that may impede their ability to actually cast a ballot and have that ballot counted. Many of these practices have been shown to disproportionately impact minority voters by preventing or simply deterring their participation in elections. Some of the most concerning include new state laws that limit the acceptable types of voter identification (ID) to those types that racial minorities are least likely to possess, substantial cutbacks to the days and hours of early voting periods popular with minority voters, and polling place relocations and closures in heavily-minority communities. Finally, reports of voter intimidation and discriminatory voter challenge efforts indicate that both tactics continue to undermine minority voters' full and unencumbered access to the ballot.

PHOTO CREDIT: JOHNNY SUNDBY

As demonstrated throughout this chapter, racial discrimination in laws and practices around voting remain a significant concern. Through non-compliance with federal laws, such as the National Voter Registration Act (NVRA), and through troubling legislative and regulatory action, states and local jurisdictions have shown that the threat to minority voters' access to the ballot continues unabated.

II. COMMUNITY VOTER REGISTRATION DRIVES

Community-based voter registration drives play an essential role in expanding opportunities for participation in the political process. By reaching would-be voters at common community gathering places, such as churches, campuses, festivals, or senior centers, community drives can make it easier for individuals with time, mobility, or language challenges to register and receive assistance with the registration process. Community-based registration has proven effective, with participating groups having registered tens of millions of voters from 2000 to 2008.[1]

The available data from surveys conducted by the U.S. Census Bureau in 2010 indicates that minorities rely more heavily on community drives than whites. Latinos reported registering through drives at nearly twice the rate of whites (8.9 percent compared to 4.4 percent), and African Americans also reported registering at a higher rate (7.2 percent).[2] Given their popularity, limitations on the ability of citizens and grassroots organizations to conduct voter registration drives can significantly impact registration opportunities for minority voters.

Florida has been one of the epicenters of recent efforts to curtail community registration drives. Historically, Florida did not allow private citizens to conduct such drives; it was not until the State began compliance with the NVRA in 1995 that private organizations and individuals were permitted to transmit completed voter registration applications to election officials.[3] Ten years later, in 2005, the State enacted a series of restrictions on citizen registration efforts, including imposing large fines on organizations and citizens who failed to submit—or timely return—the applications they collected to election officials. The League of Women Voters and other groups sued, and a federal court enjoined the law, finding that the severity of the fines "chill[ed] Plaintiffs' First Amendment speech and association rights…"[4]

In 2011, the Florida Legislature again sought to restrict community registration drives, enacting an even more onerous and complex set of requirements. In addition to pre-existing provisions imposing fines for late delivery of completed applications, requiring those conducting drives to pre-register with the State, and requiring them to submit quarterly reports of voter registration activities, the new law added some additional requirements. The new law required voter registration groups to account monthly for all registration forms used and not

used in voter registration drives, return completed forms to election officials within 48 hours of receipt from the voter, and file the names of every officer, employee, or volunteer who solicited or collected voter registration applications.[5] The League of Women Voters and other groups again sued and, once again, a federal court in Florida issued an injunction based upon the First Amendment. That court found that the new law, and its accompanying administrative rule,

> **severely restrict an organization's ability to [conduct registration drives]. The[y] […] impose a harsh and impractical 48–hour deadline for an organization to deliver applications to a voter-registration office and effectively prohibit an organization from mailing applications in. And the[y] […] impose burdensome record-keeping and reporting requirements that serve little if any purpose…[6]**

Before the 2011 law was enjoined (in significant part) by the court in Florida, the State of Florida filed suit in federal court in Washington D.C. seeking Section 5 preclearance for the new restrictions (necessary because five Florida counties were covered under Section 5 of the VRA). Although there was no finding of discrimination in that case concerning registration drives, the evidence developed in that lawsuit demonstrated the potential impact of community registration drive restrictions on minority voters. In 2008 and 2010, Florida's African-American and Hispanic voters registered through community drives at higher rates than whites.[7] Results from a U.S. Census Bureau survey indicated that, in 2008, 10.9 percent of African Americans and 10.4 percent of Hispanics in Florida registered through community drives. In 2010, the rates were similar at 10.0 percent and 12.0 percent, respectively.[8] By comparison, whites reported registering through drives at notably lower rates—5.2 percent in 2008 and 5.3 percent in 2010.[9]

Civic groups submitted testimony in the case on the burdens the restrictions placed on their ability to register their constituents. The law was described as having a "devastating impact" on the Florida NAACP's ability to recruit branch units and members to participate in voter registration drives and as "crippling" the organization's registration efforts in the State.[10] National Council of La Raza (NCLR) and the League of Women Voters of Florida imposed moratoriums on their community registration drives. The Supervisor of Elections for Hillsborough County sympathized, adding that some individuals in minority communities "are less prone to view government as being friendly" and may prefer registering with someone of their own race or ethnicity or who speaks their same language.[11] Several election supervisors testified that the limitations on community registration drives in formerly covered counties would reduce voter registration opportunities—and registration rates—for minority voters.[12]

III. FAILURE TO PROVIDE VOTER REGISTRATION AT PUBLIC ASSISTANCE AGENCIES DIMINISHES ACCESS FOR MINORITY VOTERS

Section 7 of the NVRA requires that state public assistance agencies, as well as certain other agencies, offer a comprehensive set of voter registration services to their clients. Public assistance agencies administering benefit programs that fall within the scope of Section 7 are generally required to distribute registration applications with each public assistance application, recertification, renewal, or change of address; provide assistance completing voter registration forms to their clients; and submit completed applications directly to elections officials on a voter's behalf.[13] There has been significant, widespread noncompliance with Section 7 across the country, which can have serious consequences for minority voters' access to registration opportunities.

Nationally, African Americans disproportionately receive benefits from two of the larger public assistance programs covered under Section 7 of the NVRA—Temporary Assistance for Needy Families (TANF) and Supplemental Nutrition Assistance Program (SNAP). Recent data from each program indicates that African Americans accounted for 31.9 percent of TANF families and 23.6 percent of households on SNAP.[14] Hispanics comprised 30.0 percent of TANF families and 9.1 percent of SNAP households.[15] By comparison, 37.6 percent of SNAP households and 31.8 percent of TANF families are white, a small share relative to their share of the overall population.[16] Census data further shows that minorities tend to register to vote at public assistance agencies more than whites. Latinos register through agencies at four times the rate of whites (2.8 percent versus 0.7 percent), and African Americans at three times the rate (2.5 percent).[17]

The NVRA was designed to expand access to registration opportunities for low-income individuals, and these data demonstrate that states' full compliance with Section 7 will create significant benefits to minority voters, in particular. The marked increase in new registration following successful enforcement actions or negotiations by public interest groups reinforces this. Since 2008, settlements in private lawsuits and outside of court have been reached with Georgia, Indiana, Missouri, New Mexico, Ohio, Pennsylvania, and Alabama,[18] and since 2002, the Department of Justice (DOJ) settled suits against Rhode Island and Tennessee, and entered into out-of-court settlements with Arizona and Illinois.[19] Efforts of private organizations, such as the Lawyers' Committee, Demos, and Project Vote, have resulted in nearly 2 million *additional* low-income citizens who have applied to register to vote at public assistance offices, most of which occurred in the last six years.[20] This surge in registration is also indicative of how significant non-compliance with Section 7 of the NVRA had become; after the first two years of NVRA implementation (1995-1996), when 2.6 million individuals registered at public assistance offices, registration plummeted by almost 80 percent over the next decade,

to just 540,000 during 2005-2006.[21] This steep decline is particularly striking because it occurred during a period when participation in SNAP was increasing substantially.[22]

Continuing noncompliance by state public assistance agencies threatens to foreclose one of the more convenient and accessible avenues for voter registration available to minority voters.

Case Spotlight
What is Old is New Again: Dual Voter Registration Systems

One method of restricting voting opportunities for minorities has been the implementation of dual voter registration systems, wherein voters who register using certain means of registration are registered for some, but not all, purposes. Alongside poll taxes, literacy tests, and other tactics, such systems were enacted in many Southern states following the Reconstruction era. Once thought to be a thing of the past, the practice has unfortunately enjoyed somewhat of a renaissance in recent years.

Mississippi has one of the worst histories with dual voter registration. The State's dual registration system was enacted in 1892, along with a number of other provisions designed to exclude African-American citizens from the electoral process. Under the 1892 law, prospective voters were required to register separately for municipal elections, and this posed a particular burden on disproportionately poor African-American voters, for whom the necessity of registering multiple times often prevented participation in municipal elections.[23] For much of the next century, Mississippi maintained its dual registration system, becoming the last state to have such a law, and refining it as recently as 1984. Finally, in 1987, a federal court overturned the dual registration system, holding that it was a violation of Section 2 of the VRA.[24]

"Arizona has recently implemented this dual voter registration system, and I believe it is one of the most complex, confusing, and burdensome voter registration systems in the country. It's confusing to the county recorders who handle and process the voter registrations. It's confusing to the organizations conducting voter registration guides, and it's confusing to our voters who monitor it." –Patty Hansen, Coconino County Recorder, at the NCVR Arizona state hearing. PHOTO CREDIT: MIKE ELLER (HMA PUBLIC RELATIONS)

In 1995, Mississippi implemented a new dual registration system in response to the NVRA. Pursuant to the NVRA, Mississippi was required to permit voter registration for federal elections through a federal mail-in form, at driver's license offices, and at public assistance offices.[25] Mississippi's implementation of the law allowed voters who registered under the NVRA-mandated options to vote in federal elections only. If those voters wanted to vote in state elections, they were required to re-register using state forms. By contrast, every other state implementing the NVRA's requirements made NVRA registrations effective for all purposes. After DOJ raised concerns, Mississippi refused to submit this system for Section 5 preclearance, and private plaintiffs commenced a Section 5 enforcement action, with the Supreme Court ultimately holding that the State was required to obtain preclearance.[26] When the State did so, DOJ objected, and the State abandoned the dual registration system.[27]

Several years later, dual voter registration has been revived by two states following the Supreme Court's 2013 decision in *Arizona v. ITCA*. That ruling held that states are required to "accept and use" the NVRA's federal mail-in registration forms, even when they are not accompanied by the specific documentary proof of citizenship that state law requires.[28] Adopting a tack similar to Mississippi's, Arizona and Kansas are in the process of adopting dual voter registration systems. These systems would limit citizens who register to vote using the federal form but who do not satisfy the states' documentary proof-of-citizenship requirements to voting for federal offices only.[29] The resurrection of dual registration, with its sordid history of suppressing poor and minority voters, is a matter of continuing concern.

IV. PROOF OF CITIZENSHIP

In recent years, a number of states have adopted additional procedures related to confirming the citizenship of registered voters and voter registration applicants. In particular, states have adopted new procedures ostensibly intended to purge noncitizens from registration rolls—which have often led to the improper purge of eligible citizen voters—or have imposed heightened proof-of-citizenship requirements for voter registration. Both types of activity raise concerns about their impact on the ability of eligible citizens, particularly minorities, to participate in the political process.

Citizenship Verification for List Maintenance

Numerous states have adopted citizenship verification procedures to facilitate purges of ineligible voters from their registration lists. As discussed later in this chapter, when conducted properly, purges are an important part of effective election administration. However, problems arise when purge procedures seemingly target minority voters, or impose unreasonable citizenship verification burdens on such voters.

A significant portion of voter purges are aimed at identifying noncitizens. Many states use a computerized matching process—which typically involves cross-checking the statewide voter registration list with citizenship information in the statewide driver's license database—to identify noncitizen registrants. While there is little dispute that this matching is a useful aid in identifying potentially ineligible voters, high rates of false positives and the potential for discrimination raise serious concerns. The high error rates are usually the result of predictable shortcomings, such as matching errors (i.e., a registrant is matched with the wrong person on the license list) or because the citizenship information in the driver's license database may not reflect subsequent naturalization (and thus voting eligibility). Because a substantial majority of recently naturalized citizens immigrated from Latin America, sub-Saharan Africa, or Asia, this latter problem particularly impacts minority communities.[30] Accordingly, state officials should be careful not to presume that those identified in the matching are noncitizens.

An example from Georgia is particularly instructive. In 2007, Georgia instituted a computerized citizenship matching procedure to identify and remove noncitizens from its voter rolls. Its procedure involved cross-checking the statewide voter registration list with citizenship information in the state's driver's license database. The matching procedure in Georgia had a high rate of error, which disproportionately impacted minority voters, in part because of its systematic failure to update driver's license records after an individual's naturalization.[31] After Georgia performed this matching, it provided a computer printout of the potential noncitizens to local election officials with instructions that they use the printout as a means of reviewing voter eligibility, without providing uniform procedures about how to use that information.[32] Local election officials informed thousands of voters by letter that they would

be removed from the voter registration lists unless they appeared and presented proof of their U.S. citizenship,[33] in at least some cases providing a very short time period—as little as a few days—to do so. One voter, Jose Morales, who had obtained his driver's license in April 2006 and became a citizen in November 2007, received multiple such letters from Cherokee County election officials over the course of several weeks after his registration in September 2008. Mr. Morales was forced to travel 30 minutes to prove his citizenship.[34] Mr. Morales brought a Section 5 enforcement action because the State had failed to submit this procedure for preclearance. Shortly before the November 2008 general election, a federal court in Georgia enjoined the State from using the challenged voter verification process until it obtained preclearance and ordered the State to take steps to remedy its previous unauthorized use of the process.[35]

In May 2009, DOJ interposed a Section 5 objection to the procedure, noting that "[t]his flawed system frequently subjects a disproportionate number of African-American, Asian, and/or Hispanic voters to additional and, more importantly, erroneous burdens on the right to register to vote."[36] DOJ confirmed the disproportionate impact after conducting its own analysis of new voter registrants during the period May 2008 through March 2009. Over that period, African Americans and whites comprised approximately equal shares of new registrants, yet over 60 percent more African Americans were flagged as potential noncitizens than whites. Similarly, Latino and Asian registrants were more than twice as likely as whites to be flagged as noncitizens.[37] Over one half of the new registrants initially flagged as noncitizens were, in fact, citizens and were forced to take additional steps to prove as much by presenting birth certificates, proof of naturalization, or other documentation.[38]

Georgia filed a lawsuit seeking preclearance from the federal court in Washington D.C. After it filed suit, and at DOJ's urging, Georgia revised its verification procedure, making it more accurate and less discriminatory. DOJ precleared the amended version, rendering the lawsuit moot.[39]

In 2012, Florida sought to institute a database matching procedure through which it cross-referenced state driver's license records with its voter registration lists. The Florida Secretary of State identified over 180,000 registrants as potential noncitizens, and ultimately sent a smaller list of approximately 2,700 individuals to local election officials for action. Local officials notified those on the lists that they would be removed from the rolls unless they provided proof of citizenship by the deadline indicated.[40] There were widespread complaints about the list's inaccuracy and its reliance on outdated immigration status information. The program also had a disparate effect on minority voters: 82 percent of voters on the list sent to local officials were minorities, and the majority were Latino.[41] The Secretary of State temporarily suspended the program.[42]

Shortly before the November 2012 election, the State sought to implement a different list maintenance procedure that relied on a Department of Homeland Security database known as the Systematic Alien Verification for Entitlements Program (SAVE). SAVE provides information related to an individual's eligibility for public benefits, but may not be an accurate indicator of the person's current citizenship status or voting eligibility.[43] The implementation of this cross-check was challenged as a violation of the NVRA's requirement that such systematic purges be completed at least 90 days before any federal election, and, in 2014, a federal court of appeals held that Florida had violated the requirement.[44] A second lawsuit was filed challenging Florida's failure to submit both purge programs for Section 5 preclearance.[45] The case was stayed pending the Supreme Court's decision in *Shelby County v. Holder*, and after that decision, plaintiffs voluntarily dismissed the lawsuit.[46] Florida has continued its voter purge efforts, but additional problems with the information used for matching have forced further delays.[47]

Iowa also sought to implement a similar program in 2012, through a regulation that would have permitted the Secretary of State to cross-reference Iowa's voter rolls with state and federal databases to identify suspected noncitizens and remove them from the voter rolls if they failed to provide proof of citizenship within 14 days.[48] The American Civil Liberties Union (ACLU) of Iowa and the League of United Latin American Citizens (LULAC) sued in state court. The two groups provided evidence of inaccuracy in the citizenship information being relied upon, and the effect on voter registration among naturalized citizens. The Director of LULAC of Iowa testified that his members were concerned that the State's program would result in the removal of registered Latino voters from rolls and that many new, eligible U.S. citizens with Latino names would be deterred from even registering to vote in Iowa.[49] Due to the plaintiffs' efforts, this purge program (as well as a rule expanding the grounds for voter challenges) has yet to be implemented: plaintiffs obtained a temporary injunction against implementation of these rules just before the 2012 election, and the Secretary of State voluntarily rescinded the voter challenge rule.[50] Litigation over the purge process, however, is continuing. The case remains on appeal to the Iowa Supreme Court after a lower court ruled in March 2014 in favor of the plaintiffs' motion for summary judgment.[51]

Proof of Citizenship for Voter Registration

During the last decade, laws subjecting individuals registering to vote to heightened requirements for proving U.S. citizenship have been passed in several states. A challenge to one such law was recently decided by the U.S. Supreme Court. Since 2004, four states—Arizona, Georgia, Kansas, and Alabama—have passed proof-of-citizenship laws (though only Arizona and Kansas have actually implemented their laws to date).[52]

Under federal law, states must allow individuals to register using the federal mail-in registration form (commonly called the "federal form"), provided for by the NVRA.[53] On the federal

form, a registrant proves his U.S. citizenship by an affirmation made under penalty of perjury.[54] A primary purpose of the NVRA is to increase citizen participation by making voter registration practices for federal elections simple and uniform.[55] The uniform federal mail-in form—which Congress intended to be easily used for community registration drives—supports that goal.

In addition to the federal form, which states must accept and use, states may develop and use their own mail-in registration forms. Those with proof-of-citizenship laws typically require applicants to submit additional documentation beyond the simple affirmation of citizenship. Required documentation may include naturalization certificates, copies of passports, or certified birth certificates, all of which can be difficult for registrants—including those from minority groups—to obtain, copy, and submit with their applications. Like the limitations on community registration drives discussed above, laws heightening requirements for voter registration confront potential voters at their entry point into the political process. Requiring documentary proof of citizenship for voter registration can pose particularly troubling barriers to minority voter participation.

Proponents of such laws contend that requiring additional layers of proof from applicants will help prevent noncitizens from registering to vote and casting ballots. But, as discussed below, available information shows that it is rare for noncitizens to attempt to register to vote, either mistakenly or knowingly.

The Supreme Court Rules on Proof of Citizenship in *Arizona v. ITCA*

John R. Lewis, Executive Director of the Inter Tribal Council of Arizona, Inc., and guest commissioner, received testimony at the NCVR Arizona state hearing. PHOTO CREDIT: MIKE ELLER (HMA PUBLIC RELATIONS)

The week before the 2013 *Shelby County* decision, the Supreme Court weighed in on Arizona's proof-of-citizenship law.[56] The Court considered whether Arizona could reject voter

registration applications submitted on the federal form that were not accompanied by the additional evidence of citizenship required by the State for its own form. Plaintiffs in *Arizona v. Inter Tribal Council of Arizona* successfully argued that the NVRA preempted Arizona's law, and the Court ruled that the State was in violation of the NVRA for attempting to add its additional documentary proof-of-citizenship requirements to applications submitted on the federal form without the approval of the Election Assistance Commission (EAC), the agency designated to monitor NVRA compliance and maintain the federal form.[57] The result is that, for purposes of federal elections, Arizona is required to accept otherwise-complete applications submitted using the federal form that contain the simple attestation of citizenship—without additional proof.

The Aftermath of *Arizona v. ITCA*

Following the Supreme Court's ruling, Arizona and Kansas petitioned the EAC to amend the federal form, as used in those states, to incorporate each state's proof-of-citizenship law. Their requests were denied in January 2014, and the two states sued the EAC in federal court in Kansas seeking to force it to permit their heightened proof requirements to apply to the federal form.[58] Civil rights groups intervened in the case, *Kobach v. EAC*, joining the EAC as defendants. In March 2014, the district court in Kansas ruled for the two states, requiring the EAC to permit their heightened proof requirements to apply for federal form registration.[59] The decision has been stayed pending an appeal to the Tenth Circuit Court of Appeals, from which a decision is expected in the fall of 2014.[60]

Within days of the district court's ruling in favor of Arizona and Kansas, Alabama officials announced plans to move forward with implementation of its proof-of-citizenship law. Alabama Secretary of State Jim Bennett stated that the *Kobach* decision "has given us the confidence that Alabama has strong footing for implementation of the rules regarding proof of citizenship…"[61]

As states with proof-of-citizenship laws on their books anxiously await the Tenth Circuit's decision in *Kobach*, it is important to consider the limited benefits and high costs of such laws.

The existing safeguards against noncitizen registration are highly effective. In its decision denying the Arizona and Kansas requests to add their documentary proof-of-citizenship requirements to the federal form, the EAC determined that the federal form already includes ample safeguards against noncitizens registering, and the EAC also determined that registrations by noncitizens are a rare event, representing an "exceedingly small" percentage of all registration applicants (less than one-hundredth of one percent).[62] Elections officials' experiences from other states have been in line with EAC's findings. In Georgia, where the proof-of-citizenship law has been inactive since its passage in 2008, respondents to a 2009 Brennan Center survey of elections officials reported that noncitizen registration is rare and, to the extent that it does occur, results from mistake, not fraud: "Of the elections officials who were interviewed,

representing counties that comprised 40 percent of Georgia's population, none believed that noncitizens had fraudulently registered to vote or voted."[63] Further, a Supreme Court amicus curiae brief submitted by current and former state and local elections administrators in *Arizona v. ITCA* echoed the survey findings:

> **[I]n the more than 150 years that they have collectively spent administering elections, amici have experienced almost no cases of noncitizens registering to vote, let alone actually casting a ballot. In light of this, amici's view is that the danger of noncitizen registration and voting does not justify the imposition of significant new barriers to registration by eligible individuals.[64]**

In addition to being an unnecessary response to an exceedingly rare problem, documentary proof-of-citizenship laws risk closing new voters out of the political process. These additional registration requirements have the potential to have the same effect on minority voters as strict photo ID laws, discussed later in this chapter. Minorities may be less likely to possess the required documentation, such as birth certificates, or to have the resources to obtain missing documents.[65] Further, a proof-of-citizenship requirement may decrease participation in community registration drives—which, as discussed earlier, minorities rely upon to a greater extent than whites—because potential voters may not carry on their person the documentation needed to register.[66]

While Alabama and Georgia have not implemented their laws yet, the evidence discussed herein, as well as the evidence revealed during litigation about the Arizona and Kansas laws, suggests that their heightened requirements for registration are similarly unnecessary and overly burdensome for minority voters.

> **"There is not an epidemic of non-citizens yearning to stand in long lines to cast votes in Florida. Take it from an organization that dedicates all of its resources trying to get eligible Latinos to the polls. Voter fraud from non-citizens is a nonissue."**
>
> *Ana Della Rosa, Mi Familia Vota Educational Fund, at the NCVR Florida state hearing*

Case Spotlight
Section 5 at Work: Safeguarding Voter Registration at Public Assistance Agencies

A separate proof-of-citizenship issue arose in Texas in 1996. DOJ interposed a Section 5 objection to a Texas law that barred employees of public assistance agencies from offering voter registration to clients, as required by Section 7 of the NVRA, until they first determined the client's citizenship.[67] Agency employees were to rely solely upon citizenship information contained in agency files, which DOJ determined were unlikely to remain up-to-date, given the rising numbers of new citizens in Texas during the relevant period. 1990 census figures indicated that minorities were 34 percent of the State's population and 30 percent of its voting age population, and that two-thirds of new citizens in 1993 and 1994 were Hispanic or Asian.[68]

DOJ found that Texas' procedure lacked safeguards to ensure that agency information was current and accurate. Under the procedures at issue, clients would not be informed that the reason they were not offered voter registration was their alleged noncitizen status, leaving them with no opportunity to update or correct citizenship information in their files. DOJ determined that this flaw was likely to disproportionately affect minorities.[69] Without the Section 5 review process, Texas' procedures could have foreclosed the opportunity for voter registration for large numbers of minority public assistance clients. As seen in Texas and more recently in Arizona, the potential of voting practices focused on citizenship verification to most heavily burden minority voters remains a serious concern.

PHOTO CREDIT: Wikimedia Commons/Public Domain

V. VOTER PURGES

The maintenance (or purging) of voter registration lists involves removing registrants who are not eligible to vote in the relevant jurisdiction, and is an important part of maintaining the effectiveness and integrity of election administration. In conformity with federal law, voters may be deemed ineligible due to relocation, death, conviction for a disfranchising crime, ineligibility at the time of registration (such as noncitizenship), or other reasons.

If done incorrectly, however, purges can also result in the improper removal and disenfranchisement of eligible voters. Thus, Congress, through the NVRA, enacted a variety of safeguards for purging registration lists, including: (1) requiring list maintenance procedures to be "uniform, nondiscriminatory, and in compliance with the Voting Rights Act of 1965"; (2) prohibiting a voter from being removed from the rolls solely for failure to vote; (3) mandating that any systematic program to remove registrants (i.e., one that is not based on particularized information about specific voters) be completed at least 90 days before a federal election; and (4) directing that notice be provided to registrants removed based on a change of address to ensure that the change-of-address information received by the registrar is accurate.[70] The NVRA also requires that certain registered voters who have moved, but who have not updated their registration, still be allowed to vote.[71] Despite these safeguards, however, numerous disputes have arisen surrounding voter purges in recent years.

In addition to citizenship-matching (discussed above), other systematic methods are used to execute voter purges, and these have also sometimes affected minority voters disproportionately. Two examples have been seen recently in Florida.

In 2000, Florida improperly purged thousands of voters, a disproportionate number of whom were African Americans, based on a flawed comparison of voter registration files to lists of felony convictions. A vice president of the company that generated the list later testified that the Florida Division of Elections had deliberately chosen a matching technique that would overstate the number of matches between the registration list and lists of convicted individuals.[72] The State also included as disenfranchised felons, for instance, individuals convicted in another state who had regained their right to vote before moving to Florida, where they were not disenfranchised under Florida law.[73] Given the razor-thin margins of the 2000 presidential contest in Florida, these improper purges and the confusion they caused may have had a monumental national impact.

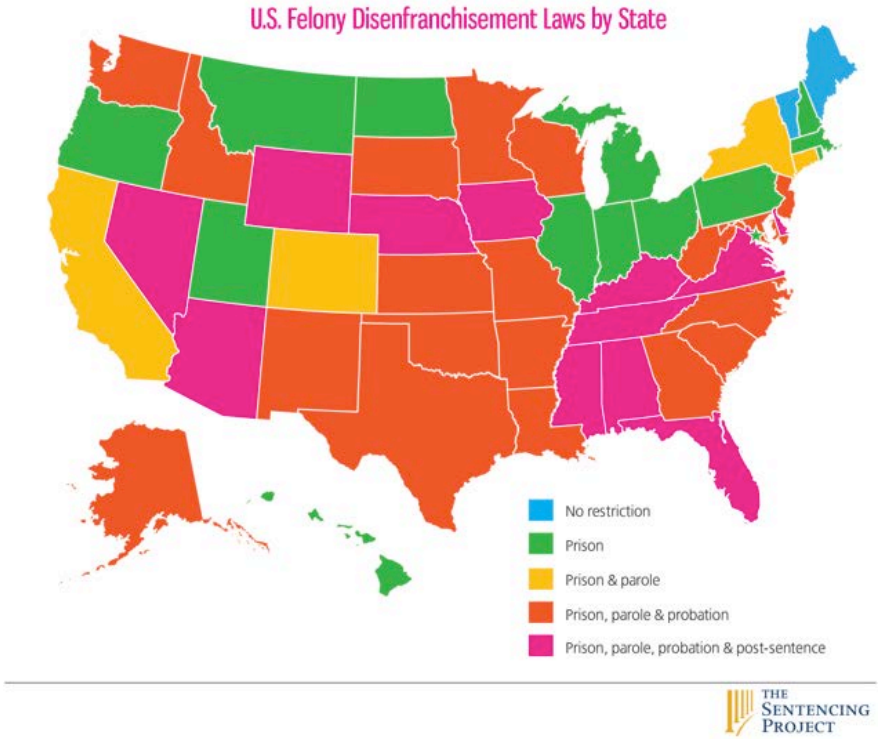
In 2004, Florida planned to remove 48,000 suspected felons from its voter rolls based on a list from the Florida Department of Law Enforcement. One indicator of the list's inaccuracy was that it employed race as an identifying attribute but relied on one database that included Hispanic as a racial category and one that did not. Nearly half of the people on the flawed list were African American, and thousands of those listed had already had their voting rights

restored under state law. Though the State abandoned this purge under pressure from voting rights groups, county election officials in Florida retain the ability to purge voters based on locally generated lists.[74]

VI. FELONY DISENFRANCHISEMENT

Over 5 million Americans are banned from voting because they have at some point been convicted of a felony.[75] Laws barring citizens with prior felony convictions from voting, sometimes for a lifetime, impact minority voters at a far higher rate than whites. Yet courts have rejected finding such laws unconstitutional or in violation of the VRA.

The rules around felony disenfranchisement vary widely by state. Two states—Maine and Vermont—allow persons in prison to vote. Most other states deny voting rights to persons with felony convictions through the end of their terms of probation and/or parole. A few states make it extremely difficult for a person with certain kinds of prior felony convictions to vote again, leaving the restoration of such rights up to the discretion of the executive. Finally, four states—Florida, Iowa, Kentucky, and Virginia—permanently disenfranchise all persons with a felony conviction absent executive action.



Source: http://www.sentencingproject.org/template/page.cfm?id=133

The difficulty in bringing successful legal challenges to felony disenfranchisement laws is largely due to the Supreme Court's interpretation of Section 2 of the 14th Amendment. In *Richardson v. Ramirez,*[76] three men from California who had already completed their sentences sued for the right to vote, arguing the State's felony disenfranchisement law violated the Equal Protection Clause of the 14th Amendment by denying their fundamental right to vote. The Court rejected this argument, and looked to Section 2 of the 14th Amendment, which allows the denial of voting rights "for participation in rebellion, or other crime." Using that clause, the Court determined that

> **the exclusion of felons from the vote has an affirmative sanction in § 2 of the Fourteenth Amendment, a sanction which was not present in the case of the other restrictions on the franchise…We hold that the understanding of those who adopted the Fourteenth Amendment, as reflected in the express language of § 2 and in the historical and judicial interpretation of the Amendment's applicability to state laws disenfranchising felons, is of controlling significance in distinguishing such laws from those other state limitations on the franchise which have been held invalid under the Equal Protection Clause by this Court.**[77]

Largely as a result of this decision, courts have rejected challenges to felony disenfranchisement laws under the discriminatory results standard of Section 2 of the VRA, as discussed below. Evidence of discriminatory intent, on the other hand, may allow for a successful challenge to a felony disenfranchisement law; however, even that has not always been sufficient. The only case that was successful in this regard was *Hunter v. Underwood*, in which the Supreme Court held unconstitutional a provision in the State of Alabama's 1901 constitution disenfranchising individuals convicted of a crime of "moral turpitude."[78]

The Racially Disproportionate Effect of Felony Disenfranchisement

Felony disenfranchisement laws, and courts' reluctance to strike them down, have led to millions of Americans without voting rights. Moreover, those laws have had particularly dramatic effects on minority citizens' ability to participate in elections.

The statistics show the dramatic effect of felony disenfranchisement laws on racial minorities:

There is clear evidence that state felony disenfranchisement laws have a disparate impact on African Americans and other minority groups. At present, 7.7% of the adult African-American population, or one out of every thirteen, is disenfranchised. This rate is four times greater than the non-African-American population rate of 1.8%. In three states, at least one out of every five African-American adults is disenfranchised: Florida (23%), Kentucky (22%), and Virginia (20%). Nationwide, 2.2 million African-Americans are disenfranchised on the basis of involvement with the criminal justice system, more than 40% of whom have completed the terms of their sentences. Information on the disenfranchisement rates of other groups is extremely limited, but the available data suggests felony disenfranchisement laws may also disproportionately impact individuals of Hispanic origin and others. Hispanics are incarcerated in state and federal prisons at higher rates than non-Hispanics: about 2.4 times greater for Hispanic men and 1.5 times for Hispanic women. If current incarceration trends hold, 17% of Hispanic men will be incarcerated during their lifetimes, in contrast to less than 6% of non-Hispanic white men. Given these disparities, it is reasonable to assume that individuals of Hispanic origin are likely to be barred from voting under felony disenfranchisement laws at disproportionate rates.[79]

This means that, as a result of felony disenfranchisement, there is a structurally imposed sub-class of Americans, mostly minority, who are deprived of the most fundamental right, the right to vote. Moreover, scholarly research indicates that in the post-Civil War years, several felony disenfranchisement laws were enacted with the aim of limiting the voting rights of the newly enfranchised African-American population.[80]

The Lack of Judicial Receptivity to Challenges to Felony Disenfranchisement Claims

As noted above, there have been a number of different legal efforts to challenge the felony disenfranchisement laws of various states.

Johnson v. Governor of Florida, ultimately decided in 2005, provides an example of a case in which evidence was presented that the law had originally been enacted in 1868 with a discriminatory purpose, and yet was nonetheless upheld. This case was a class action of 525,000 disenfranchised Florida citizens, in which the plaintiffs claimed that Florida's law, which permanently bans persons currently or formerly incarcerated for felonies, violates the 14th and 15th Amendments of the Constitution and Section 2 of the VRA.[81]

The plaintiffs showed that the historical record demonstrated the racial origins of the felony disenfranchisement law in the State. Florida's first constitution of 1838 authorized felony disenfranchisement laws, and in 1845 Florida's legislature enacted such a law.

Tanya Fogle, a member of Kentuckians for the Commonwealth, testified about the lengthy process and difficulty she experienced regaining her right to vote following a felony conviction. (NCVR Nashville regional hearing)
PHOTO CREDIT: JOSEPH GRANT

It was just after the Civil War, in 1868, when all states were required to amend their constitutions to comply with the new suffrage requirements, that Florida held a constitutional convention and included mandatory disenfranchisement of all persons with felony convictions in the state constitution. It also added the specific crime of larceny to the list of disenfranchising crimes, which would greatly increase the number of affected citizens. As the plaintiffs explained:

> **The broad disenfranchisement of every convicted felon in Florida's 1868 Constitution and the addition of larceny as a disenfranchising crime were enacted with the intention of restricting the voting rights of Florida's newly freed black population. White Floridians were strongly opposed to black suffrage after the Civil War. Blacks were finally given the right to vote in the 1868 Constitution so that Florida could gain readmission to the Union. However, the 1868 Constitution contained several measures in addition to the felon and specific crime disenfranchisement provisions that were adopted to limit the power of black votes. Further measures to restrict black suffrage were adopted as part of the 1885 Constitution. The discriminatory intent behind the disenfranchisement provisions is demonstrated by the history of the 1865, 1868, and 1885 Constitutions as well as Florida's use of criminal laws to control former slaves and create a low-wage labor force to replace that lost by the abolishment of slavery.[82]**

When the 1968 Florida Constitution was drafted, the larceny provision was removed, but the provision requiring disenfranchisement of all convicted felons was left intact.[83] When challenged in 2000, the district court found, even in awarding summary judgment to the defendants, that "Plaintiffs have presented to this Court an abundance of expert testimony about the historical background of Florida's felon disenfranchisement scheme as historical evidence that the policy was enacted originally in 1868 with the particular discriminatory purpose of keeping blacks from voting."[84] Nevertheless, in a ruling of the entire Eleventh Circuit en banc, overturning the decision of a three-judge panel of the same court (which had reversed the district court's summary judgment ruling on the Section 2 claim[85]) the felony disenfranchisement provision was upheld and ruled not to run afoul of the Equal Protection Clause or Section 2. The en banc court found that, even if there was racial animus behind the provision in 1868, there was no evidence of racial motivation in the drafting of the 1968 version, so the historical evidence of the original discriminatory intent was insufficient to prove a constitutional violation. While acknowledging that typically Section 2 cases are subject to a discriminatory results test, the court cited the Supreme Court's decision in *Richardson* in stating that felony disenfranchisement laws are distinct because they "are deeply rooted in this Nation's history and are a punitive device stemming from criminal law.… Florida's discretion to deny the vote to convicted felons is fixed by the text of § 2 of the Fourteenth Amendment."[86] The Supreme Court denied certiorari.

As a result, to this day Florida permanently disenfranchises all individuals with a felony conviction, unless they receive discretionary executive clemency. As of 2010, Florida had disenfranchised 1,541,602 citizens due to a felony conviction. This amounts to the disenfranchisement of 10.4 percent of the State's voting age population and 23.3 percent of Florida's African-American voting age population.[87]

In *Farrakhan v. Gregoire*, several minorities with felony convictions challenged the State of Washington's felony disenfranchisement law under the VRA's Section 2 results test.[88] Plaintiffs argued that the discriminatory impact of the felony disenfranchisement law was a result of racial bias throughout the criminal justice system, using extensive data to demonstrate discrimination in all stages of the criminal process. The federal district court granted summary judgment for the State, and several rounds of appeals followed.[89] Ultimately, the case was argued before an en banc panel of eleven judges in the United States Court of Appeals for the Ninth Circuit. The en banc court subsequently upheld the felony disenfranchisement law. It stated that only intent claims could be made against felony disenfranchisement laws, holding that "plaintiffs bringing a section 2 VRA challenge to a felon disenfranchisement law based on the operation of a state's criminal justice system must at least show that the criminal justice system is infected by intentional discrimination or that the felon disenfranchisement law was enacted with such intent."[90]

Following the decision in *Farrakhan*, and given the difficulty plaintiffs face in bringing intentional discrimination claims, advocates have abandoned federal challenges to felony disenfranchisement laws for now.

The Effect of Felony Disenfranchisement Laws in Particular States

As discussed above, the rules around restoration of voting rights for persons with prior felony convictions vary widely by state. In the states that make it the most difficult—or nearly impossible—to regain voting rights, a great number of individuals have been disenfranchised. The numbers of African Americans banned from voting in these states is remarkable. The following are a few examples:

Virginia permanently disenfranchises all persons with felony convictions unless they receive clemency. In 2000, the Fourth Circuit rejected a challenge under the VRA to Virginia's felony disenfranchisement law, holding that the plaintiff had failed to demonstrate that the law was the result of racially discriminatory intent or that there was "any nexus" between the disenfranchisement of felons and race.[91] At least 20 percent of adult African Americans in Virginia are disenfranchised.[92] A July 2013 executive order from Governor Bob McDonnell now allows individuals convicted of certain non-violent felonies to apply to restore their voting rights.[93] According to testimony the National Commission on Voting Rights (NCVR) heard at its Virginia hearing, an estimated 350,000 Virginians are disenfranchised because of the State's law.[94]

Similarly, Kentucky permanently disenfranchises formerly incarcerated citizens, even after they have completed their sentences. The authority for Kentucky's lifetime voting ban for persons convicted of a felony is established under the state constitution, and rights may only be restored through an executive pardon by the Governor.[95] The Kentucky Advisory Committee to the U.S. Commission on Civil Rights (USCCR) notes, however, that the pardoning process varies depending on Administration and is not subject to any established law, statute, or regulation.[96] Thus, it is estimated that 243,842 residents in the State of Kentucky were barred from voting in 2010, including approximately 181,000 who had completed their full sentences.[97] The Kentucky Advisory Committee reports that those disenfranchised are disproportionately minorities[98]—at 22 percent, Kentucky has the second highest rate of voter disenfranchisement among African Americans in the country.[99]

According to testimony submitted by the ACLU of Iowa at the NCVR's Kansas City hearing, in 2005 one of four voting age African Americans were disenfranchised under Iowa's lifetime voting ban for individuals with felony convictions. That year, the governor issued an executive order automatically restoring the rights of formerly incarcerated persons. In 2011, however, a new governor rescinded the policy and reinstated the process of individual review, under

which formerly incarcerated persons must apply to the governor's office for restoration of rights. One requirement for restoration is that the individual be up to date on paying fines, fees, and restitution. As a result, in the last year only 40 people applied to have their voting rights restored.[100]

Betty C. Andrews, President of the Iowa-Nebraska State Conference of the National Association for the Advancement of Colored People, testified at the NCVR Kansas City regional hearing about the detrimental effect of the permanent disenfranchisement of individuals with criminal convictions in Iowa. PHOTO CREDIT: BRUCE MATHEWS (MATHEWS COMMUNICATION)

Thomas Castelli, Legal Director of the ACLU of Tennessee, testified at the NCVR hearing in Nashville about Tennessee's felony disenfranchisement law. To be eligible for restoration of rights in Tennessee, one with a prior felony conviction must complete his term, and all fines, fees, and restitution must also be paid in full. In addition, as of recently, a citizen must also be current on child support payments. As a result, according to Mr. Castelli, "only 2% of disenfranchised citizens who have completed their sentences, probation and parole have successfully restored their voting rights."[101] He further reported that in Tennessee, 341,815 people are disenfranchised and that one out of every 5.25 African-American adults is disenfranchised.[102]

Confusion Regarding When and How Rights are Restored Results in Further Disenfranchisement

Another problem arises with respect to notifying persons with prior felony convictions that they have reacquired their voting rights and informing them about the process for re-registering once they become eligible. In many instances these citizens are provided with no such information, or are misinformed by election officials who are unfamiliar with these laws. NCVR heard testimony to this effect, for example, in South Carolina and California,[103] and with respect to Minnesota, where one witness cited the governor's task force finding that "[n]o database exists that can accurately identify when a felon regains the eligibility to vote, and that the question of disenfranchisement creates significant confusion among the public election judges, election administrators and the individual convicted of a felony. There are currently no notification procedures consistently followed" in Minnesota.[104]

Once individuals are aware of the restoration process, there are the procedural obstacles many persons with former felony convictions must address to regain their rights, which they may or may not know how to navigate. The obstacles can include financial costs and be extremely time consuming to overcome.

At the NCVR Nashville regional hearing, 74-year-old Teddy Smith Roglar stated that she could have been arrested for voting with a felony record in the state of Kentucky. PHOTO CREDIT: JOSEPH GRANT

The NCVR heard a number of poignant stories related to felony disenfranchisement throughout its proceedings. To provide just one example, at the Commission's Florida hearing, Desmond Meade, president of the Florida Rights Restoration Coalition, told the NCVR the following:

> **Not too long ago, August of 2005, I remember standing in front of the railroad tracks in Miami waiting on a train to come so I could jump in front of it to commit suicide because at that time I was recently released from prison, I was addicted to drugs and alcohol, I was homeless and I saw no hope, no future. But by the grace of God the train never came and I crossed those tracks and I entered into the substance abuse treatment facility and after graduating there I went to Miami-Dade College while I was living in a homeless shelter. I enrolled in Miami-Dade College and I was able to complete the paralegal program there. One thing led to another and today I am happy to announce that I am a month away from graduating law school at Florida International University.**
>
> **While I appreciate the applause, my story does not have a happy ending because I am among the over 1.54 million Floridians who cannot vote as a result of Florida's policy on felony disenfranchisement. As it stands today an individual will have to wait five to seven years after completion of their sentence before being able to apply to have their rights restored. After they apply, there's an application process in time of approximately six years.**
>
> **We recently heard of a story of a gentleman who had been waiting ten years to find out the status of his application. And, therefore, we have a system or policy that would dictate that a person wait anywhere between 11 to 13 years before they see if they have a chance.**[105]

VII. VOTER ID

Introduction

During the last decade, legislators, courts, and the public have grappled with questions of whether, and if so what types of, ID should be required in order for a voter's vote to be counted. The more restrictive laws—which require voters to produce one of a limited set of government-issued photo IDs—impact minority voters disproportionately, and two federal courts have enjoined these laws because of their racial impact.

Prior to the 2000 election, states generally had ID requirements that most, if not all, voters could satisfy. In most states, voters simply attested to their identity. Most states did not require a form of ID, and even amongst those that did, a document provided by the election authority sufficed (as was the case in South Carolina and Texas).[106] Alternatively, in lieu of providing a document, an individual would be able to vote after signing an affidavit attesting to his or her identity (as was the case in Louisiana).[107]

Justin Jones, Chair of the Nashville Student Organizing Committee, holding up his student ID and voter registration card. Jones testified about the barriers to student voting, pointing out that Tennessee allows voters to use their gun registration card, but not student IDs as an acceptable form of ID. PHOTO CREDIT: JOSEPH GRANT

After the 2000 election, Congress passed the Help America Vote Act, which included a voter ID requirement that applies only to first-time voters who register by mail and allows for a wide range of acceptable identifying documents.[108]

In 2005, Georgia and Indiana became the first states to require voters to produce one of a short list of government-issued photo IDs before their votes would be counted. As discussed more fully below, these laws were challenged in both states, and the federal court decisions that resulted have framed the parameters of subsequent voter ID laws and litigation. A combination of the Supreme Court's decision upholding Indiana's law and political changes arising from the 2010 election resulted in seven states enacting photo ID bills during the 2011-2012 legislative sessions.

The *Shelby County* decision had an immediate impact on voter ID laws in states that were formerly covered by Section 5 of the VRA. On the day of the *Shelby County* decision, Texas announced that it would immediately began to implement its voter ID bill that had been blocked under Section 5 (first by DOJ and then the federal district court). Alabama also announced on the same day that it would begin implementing its government-issued photo ID requirement for voting.[109] Within a few days, Mississippi made the same announcement with respect to a similar requirement.[110] Shortly thereafter, as discussed below, North Carolina passed legislation including stringent new voter ID requirements.[111]

Justifications for ID Laws and Statistics Regarding ID

The primary justification given by proponents of ID laws is that they are necessary to prevent fraud. However, as has been demonstrated in repeated academic studies and government investigations, the only form of fraud that would be addressed by voter identification laws—commission of fraud by impersonating a voter—is practically nonexistent.[112] Of the few election fraud cases brought by DOJ between 2002 and 2005, none appears to be of the type that would have been addressed by a voter ID requirement.[113] This is particularly striking as we now know that U.S. attorneys were under enormous pressure to pursue these types of cases in the 2000s.[114] It is also quite telling that in virtually every lawsuit where states have identified prevention of voter fraud as a justification for their voter ID laws, they have been unable to identify any actual examples of voter impersonation in their state.[115] Indeed, in *Crawford v. Marion County Election Board*, the Supreme Court decision upholding Indiana's voter identification law, Indiana admitted that it had not identified any examples of such voter fraud and Justice Stevens, in his plurality opinion, could only cite two allegations of voter impersonation fraud from other states: the Boss Tweed regime in New York in the nineteenth century and a single case of possible impersonation in the Washington State gubernatorial election of 2004.[116] Most recently, a federal judge pointed out in a Wisconsin ID case that the defendants had been unable to provide one instance of fraudulent impersonation in the State.[117]

Given the lack of evidence of voter impersonation, proponents of ID laws have sought to defend their legitimacy by other means. They claim that voter impersonation is a reality, even though it cannot be proven.[118] They also contend that voter ID laws increase voter confidence in the electoral process because with ID laws in place, voters perceive that there will be less fraud.[119] This unproven assertion ignores the likelihood that voter ID laws may cause some voters—particularly those that lack the required ID—to have less confidence in the electoral process.

While claims that ID laws increase voter confidence remain unverified, it is well-documented that racial minorities are less likely than whites to have the most common forms of government-issued photo ID. While about 11 percent of Americans do not have a driver's license or non-driver's government ID, African Americans, Latinos, immigrants, Native Americans, and the poor disproportionately lack the required documentation. Academic study after academic study has shown that these groups are much less likely than whites to have government-issued photo ID, such as a driver's license.[120] A national survey by the Brennan Center found that Americans earning less than $35,000 are twice as likely to lack ID as Americans who earn more than $35,000, and that African Americans are more than three times as likely as whites to not have ID. Indeed, the survey found that one-fourth of African Americans do not have a government-issued photo ID.[121]

The legal cases discussed below present a multiplicity of state-specific data confirming the fact that minority voters are overrepresented among those who lack ID. To many civil and voting rights advocates, these new voter ID laws are just a more subtle reincarnation of the poll tax.

The Georgia and Indiana Laws: Setting the Stage

In 2005, Georgia and Indiana became the first states to significantly restrict the types of government-issued photo ID that would be required from voters. Both laws have been challenged in court, and the outcomes have informed subsequent legislation and litigation around voter ID.

In 2005, the Georgia General Assembly passed its first voter ID law over protests and walkouts by its Black Legislative Caucus.[122] The law required that a voter provide one of six forms of government-issued ID: a Georgia driver's license; a valid ID card issued by the State of Georgia, by another state, or by the United States; a valid U.S. passport; a valid employee photo ID card issued by the State of Georgia, by one of its subdivisions, or by the United States; a valid U.S. military photo ID card; or a valid tribal photo ID card.[123] The law did not provide for a free means of obtaining ID. In *Common Cause of Georgia v. Billups*,[124] the district court issued a preliminary injunction enjoining the law and finding that the plaintiffs

were likely to prevail on multiple claims, including the claim that failure to provide for free ID constituted a poll tax.

The next year the General Assembly amended the law, and part of the amendment and implementing regulations enabled any voter to obtain a voter ID for free from the county registrar.[125] The registrar could use the signature on the voter's registration application as a means of verifying the voter's identity. Plaintiffs challenged the amended law but were unsuccessful: federal courts found that the availability of free IDs that are relatively easy to obtain solved the problem with the earlier law.[126]

The significance of the Georgia case is that subsequent state legislatures have had to be careful to ensure that they make free IDs available when adopting new, restrictive voter ID laws. Not all have made it as easy for voters to obtain the free ID, however, and some states' procedures for obtaining ID can significantly burden voters.

In *Crawford v. Marion County Election Board*,[127] the U.S. Supreme Court voted 6-3 to uphold Indiana's voter ID law against a facial challenge that it violated the fundamental right to vote under the 14th Amendment.[128] The law required that voters present a form of ID that was issued by the State of Indiana or by the United States and displayed the voter's photo, name (which had to conform, but not necessarily be identical, to the name listed on their voter registration card), and an expiration date indicating that the ID was currently valid or had expired after the date of the last General Election.[129]

The plurality opinion balanced the State's justifications for the law against the burden that the law imposed on voters. Drawing from the district court's determinations, the Supreme Court found that the burden on voters was "limited"[130] because the evidence in the record was lacking: the record did "not provide us with the number of registered voters without identification[,]"[131] did "not provide any concrete evidence of the burden imposed on voters who currently lack photo identification[,]"[132] and said "virtually nothing about the difficulties faced by either indigent voters or voters with religious objections to being photographed."[133] Accordingly, the Supreme Court upheld the law.[134]

Proponents and opponents of restrictive voter ID laws have interpreted the *Crawford* decision differently. After *Crawford*, some proponents have erroneously interpreted the ruling as a blanket imprimatur of legality to any voter ID law. This is distinctly not the case. For example, Texas has repeatedly made that argument in litigation surrounding its law (see sidebar later in this chapter for details involving the Texas ID law and the litigation). In the initial Section 5 litigation, Texas argued that *Crawford* required the court to uphold its ID requirement, saying that it "controls this case[.]"[135] In the subsequent post-*Shelby County* Section 2 litigation concerning the Texas law, Texas moved to dismiss the challenge to its ID law, in part on the grounds that "[v]oter-identification laws are constitutional. The Supreme Court so held

in *Crawford v. Marion County Election Board.*…."[136] In denying the motion to dismiss, the Texas district court explicitly rejected this argument: "Defendants overstate the Supreme Court's approval of voter identification laws… While a photo identification law was squarely at issue in *Crawford*, the terms of that law, the nature of the claims, and the specific holding fail to produce any Supreme Court preclusion of the claims made here." The judge specifically pointed to the fact that in *Crawford* there was a necessary balancing test under the 14th Amendment, under which the defendants narrowly succeeded; *Crawford* said nothing about claims brought under Section 2 of the VRA or the First, Fifteenth, and Twenty-fourth Amendments against a photo ID law.[137]

The opponents of voter ID have drawn their own lessons from the *Crawford* decision. In order to craft stronger legal challenges, they have placed more emphasis on developing a record that: (1) shows more definitively how many people are affected by the law, (2) demonstrates implementation problems, and (3) includes compelling testimony from individuals affected by the law.

The VRA at Work: Wisconsin, South Carolina, and Texas

There are three states where the VRA has affected an enacted voter ID law in recent years: Wisconsin, where the federal district court enjoined the law as a violation of Section 2 of the VRA; South Carolina, where the State significantly modified the law during a Section 5 preclearance lawsuit; and Texas, where the federal district court found that the law violated Section 5, a decision that was vacated after the *Shelby County* case, and is now the subject of multiple Section 2 lawsuits. Wisconsin is discussed below, South Carolina in Chapter 3, and Texas in the sidebar later in this chapter.

In a decision issued on April 29, 2014, a federal district court judge found that Wisconsin's voter ID law has a racially discriminatory result in violation of Section 2 of the VRA, and that the law violates the fundamental right to vote under the 14th Amendment.[138] The court found that approximately 300,000 registered voters lacked one of the nine required forms of photo ID.[139] Drawing from expert and fact witness testimony, the court then found that those without ID, especially those in poverty, faced significant financial, transportation-related, and administrative hurdles in obtaining identification.[140] In addition, the court found that the evidence presented at trial showed that African-American and Latino voters in Wisconsin are far less likely to have an acceptable ID because of socioeconomic disparities traceable to the effects of discrimination.[141] In contrast, the court found that the justifications for the law were tenuous at best. It rejected Wisconsin's voter fraud justification by finding that "there is virtually no voter-impersonation fraud in Wisconsin."[142] The court also found Wisconsin's argument that voter ID laws promote public confidence in the electoral process to be unsupported by the social science research and that such laws may tend to undermine confidence in the electoral process as much as they promote it.[143]

At the NCVR hearing in Minneapolis, Karyn Rotker, Senior Staff Attorney at the Wisconsin ACLU, which represented plaintiffs, submitted testimony citing expert statements provided to the court in the case showing that in "Milwaukee County alone—where the vast majority of the State's entire African-American population and a substantial plurality of its Latino population resides—13.2% of eligible African-American voters and 14.9% of eligible Latino voters lacked accepted ID, compared to 7.3% of eligible white voters."[144] Moreover, she cited statements demonstrating that "15.3% of registered African-American voters and 11.3% of registered Latino voters lack accepted forms of ID, compared to 6.0% of registered white voters. An analysis of statewide data shows similar disparities."[145]

Using State Law to Block Voter Identification Provisions: Missouri, Arkansas, and Pennsylvania

Most states have a provision guaranteeing the fundamental right to vote in their state constitutions,[146] and in Missouri, this provision was used successfully to challenge the state's government-issued photo ID requirement in *Weinschenk v. State*.[147] In May 2014, a state court found that Arkansas' 2003 photo ID law violated the state constitution because it impermissibly added a qualification for voting.[148] The Arkansas case remains in litigation.

The most intensively litigated case applying state law to block an ID provision was brought in Pennsylvania. On March 14, 2012, Pennsylvania passed a law requiring voters to show a valid photo ID in order to vote. The ID law was challenged in May 2012 as a violation of Pennsylvania's fundamental right to vote in *Applewhite v. Commonwealth of Pennsylvania*.[149] After the trial court denied the plaintiffs' motion for preliminary relief, plaintiffs successfully appealed to Pennsylvania Supreme Court. The Pennsylvania Supreme Court found the availability of the State's free voter ID problematic. The ID law had a "liberal access" provision, which allowed voters to obtain a free ID through the Pennsylvania Department of Transportation (PennDOT) by completing an application stating that they did not have an ID that could be used for voting. However, state officials had made it difficult for voters to actually obtain a free ID.[150] The Pennsylvania Supreme Court noted that although the free ID provisions affected "a minority of the population," those most affected are "members of some of the most vulnerable segments of the society."[151] The State Supreme Court instructed the trial court to enjoin the voter ID law for the November 2012 election, unless the trial court was "convinced in its predictive judgment that there will be no voter disenfranchisement arising out of the Commonwealth's implementation of a voter identification requirement for purposes of the upcoming election."[152] The trial court subsequently enjoined the law for that election.

The parties tried the case in 2013, and on January 17, 2014, a judge issued an injunction permanently blocking the enforcement of Pennsylvania's voter ID law on the grounds that it violated the fundamental right to vote.[153] According to the court opinion, the State's own database comparison showed that 759,000 registered voters did not have a Pennsylvania

ID and another 575,000 did not have an ID that would be valid for the 2012 election. In total, *1.3 million registered voters* lacked the ID needed to vote. Moreover, the judge found that "[i]n contrast to the hundreds of thousands who lack compliant photo ID, only 17,000 photo IDs for voting purposes (DOS [Department of State] IDs + PennDOT Voting IDs) have been issued….This includes issuance of less than four thousand DOS IDs."[154] The court found that there were a number of impediments to getting a voter ID, including that in many counties the state offices were only open two days a week, state employees had received inadequate training, and inaccurate messages were sent to voters.[155] In addition to finding that the law burdened voters, the court found that the State had failed to provide any evidence supporting the two justifications it offered for the law–preventing voter fraud and promoting public confidence in the electoral system. Thus, the court found the law unconstitutional. On May 8, 2014 the Governor of Pennsylvania announced that he would not appeal the case to the State Supreme Court.

Pending Litigation over North Carolina's Photo ID Requirement

Less than two months after the *Shelby County* decision, North Carolina passed a wide-ranging voting law, H.B. 589, that includes a new government-issued photo ID requirement. DOJ and two sets of private plaintiffs have challenged H.B. 589 on a number of grounds. These three different cases challenge the North Carolina law under the VRA and have been consolidated.[156] DOJ's complaint included the following allegations regarding the disproportionate impact of the new ID requirements on African Americans. The complaint draws largely from an April 2013 study where North Carolina's State Board of Elections matched the registered voter list to Department of Motor Vehicles (DMV) records:[157]

Barbara Arnwine, Executive Director of the Lawyers' Committee for Civil Rights Under Law and a guest commissioner at the NCVR hearing in North Carolina. PHOTO CREDIT: ALLISON MEDER

> **Voters who need a special identification card to meet HB 589's voter photo identification requirement will have to travel to a DMV office to obtain the card. In 10 North Carolina counties, the only DMV office is open only once per month. Four of these counties are among the 10 North Carolina counties that have the highest percentage of African-American voting-age populations in the State, including Bertie County, which has the highest at 60.7 percent. […] Although African-American voters comprised 22.5 percent of total registered voters in**

> **the State at the time of the analysis, 33.8 percent (107,681) of the registered voters on the no-match list [of those citizens with DMV issued ID] were African-American. In contrast, white voters constituted 71.0 percent of the total registered voter population in the State, but were only 54.2 percent (172,613) of the registered voters on the no-match list. Further, of the 4,562,097 white registered voters in the State, 3.8 percent appeared to not have DMV-issued identification, whereas of the 1,445,799 African-American registered voters, 7.4 percent appeared not to have DMV-issued identification.[158]**

Examples of Poll Workers Improperly Requiring Identification from Minority Voters

"At certain poll sites, poll workers would only ask Asian-American voters for their ID and make it a requirement. We've seen that across the country, whether there is a voter ID law or not, poll workers use that as an opportunity to selectively disfranchise certain voters." Jerry Vattamala (seated far right), Attorney for the Asian American Defense and Educational Fund, at the NCVR Pennsylvania state hearing. PHOTO CREDIT: BEN BOWENS

Another notable problem is poll workers requiring identification from minority voters when it is not legally required. This has not only been documented anecdotally, it has been found to be the case in two major academic studies, one focused on New Mexico and the other on Boston, Massachusetts.[159] The studies found that Latinos and African Americans were consistently asked for identification at higher rates, regardless of whether voter ID was actually required by law.[160]

The NCVR also heard testimony to this effect with respect to Asian Americans. In Pennsylvania, Rahat Babar, the president of the Asian Pacific American Bar Association of Pennsylvania testified that,

> **Even when the law was subject to a partial preliminary injunction during the 2012 elections [when poll workers were supposed to request ID, but still allow those without ID to vote], we discovered that poll workers applied the voter ID law in a discriminatory way against Asian Americans and other persons of color. Some Asian-American voters were subject to excessive requests to present identification and, in other instances, required to prove citizenship.[161]**

Case Spotlight
Voter ID in Texas

Texas' voter ID requirement perhaps best illustrates the questionable necessity of these laws and their relationship to the VRA.

Prior to 2011, Texas law required that an in-person voter present his or her voter registration certificate in order to vote.[162] Any voter without a certificate had to complete an affidavit stating that he or she did not have a certificate, and the voter would be required to present another form of ID.[163]

Nonetheless, in 2011, Texas enacted what the court in *Texas v. Holder* would later call the "most stringent" voter ID law in the country.[164] Texas submitted its law, S.B. 14, to DOJ for Section 5 preclearance. DOJ denied preclearance on the grounds that Texas failed to show that the law would not have a retrogressive effect. This was partially based on data from Texas state databases submitted to the DOJ, which revealed that a Latino registered voter was at least 46.5 percent, and potentially 120.0 percent, more likely than a non-Latino registered voter to lack the requisite ID.[165]

Undeterred, Texas next sought preclearance in the U.S. District Court for the District of Columbia. Like DOJ, the federal court denied preclearance on the grounds that Texas failed to show that the law did not have a discriminatory effect.[166] The court noted that not all voter ID laws are alike and laws "might well be precleared if they ensure (1) that all prospective voters can easily obtain free photo ID and (2) that any underlying documents required to obtain that ID were truly free of charge."[167] The court concluded that:

> **record evidence suggests that SB 14, if implemented, would in fact have a retrogressive effect on Hispanic and African-American voters. This conclusion flows from three basic facts: (1) a substantial subgroup of Texas voters, many of whom are African-American or Hispanic, lack photo ID; (2) the burdens associated with obtaining ID will weigh most heavily on the poor; and (3) racial minorities in Texas are disproportionately likely to live in poverty.[168]**

Part of this determination was based on evidence that some voters would have to travel more than 200 miles roundtrip to obtain an accepted ID and that they would have to pay at least $22 to obtain a birth certificate that would enable to them to obtain an ID.[169] In addition, the court found it significant that the legislature rejected a number of proposed amendments that would have made identification more accessible for certain groups, stating:

> **[C]rucially, the Texas legislature defeated several amendments that could have made this a far closer case. Ignoring warnings that SB 14, as written, would disenfranchise minorities and the poor, the legislature tabled or defeated amendments that would have:**
>
> - **waived all fees for indigent persons who needed the underlying documents to obtain an EIC [Election Identification Certificate];**
> - **reimbursed impoverished Texans for EIC-related travel costs;**
> - **expanded the range of identifications acceptable under SB 14 by allowing voters to present student or Medicare ID cards at the polls;**
> - **required DPS [Department of Public Safety] offices to remain open in the evening and on weekends; and**
> - **allowed indigent persons to cast provisional ballots without photo ID.**

"Put another way, if counsel [defending the Texas law] faced an 'impossible burden,' it was because of the law Texas enacted—nothing more, nothing less."[170]

Texas appealed the district court's ruling. During the course of the appeal, the Supreme Court decided *Shelby County*, which effectively ended the case because Texas was no longer covered by Section 5.[171] On the day of the *Shelby County* decision, Texas Attorney General Greg Abbott announced that Texas would begin implementing its voter ID law.[172] As discussed above, the United States and multiple sets of private plaintiffs have brought challenges to the Texas ID law under Section 2 of the VRA, and the case is pending in federal court.[173]

VIII. EARLY IN-PERSON VOTING

In recent decades, the option of voting in person on days prior to Election Day has become enormously popular with voters and election administrators. Today, 33 states and the District of Columbia offer some form of early voting.[174] Early voting makes it easier to vote, especially for working people who have multiple commitments and responsibilities. As a federal district court in D.C. noted, African Americans in several Florida counties took advantage of early voting opportunities at a rate nearly double that of white voters in the 2008 election.[175] Inflexible work schedules, limited access to reliable transportation (including lower car-ownership rates), and the focus on early voting by get–out-the-vote efforts in minority communities were cited as factors accounting for African Americans' higher early voting rate in the State.[176]

Unfortunately, in recent years, several states have significantly cut back on the number of days and hours of early voting. Critically, these reductions have often eliminated voting in the evening and on Saturdays and Sundays, including the Sunday before Election Day. This change has hit African Americans particularly hard because it had become a popular practice in African American churches in some states, including Florida, for congregants to go vote together after Sunday church services.

Florida is one state that has sought to restrict early voting. In advance of the 2012 election, Florida enacted H.B. 1355 which, among other things, reduced the number of days that counties were permitted to offer early voting from 14 to eight, cut in half the number of total hours that counties were required to offer for early voting from 96 to 48, and eliminated in-person voting on the Sunday before Election Day.[177] As a result, early voting turnout dropped by over 225,000 voters from 2008 to 2012.[178] Long lines were prevalent during both the early voting period and on Election Day. Election Day lines were so long that some people only managed to vote after midnight.[179] One study indicated that more than 201,000 voters likely did not vote because of long lines.[180]

Data from previous elections in Florida foreshadowed the disproportionate effect early voting cuts would have on African Americans and other minorities. An analysis of voting data from 2008 found that "not only did African Americans cast more [early in-person] ballots than they cast on Election Day, but also that African Americans accounted for a much greater proportion of the early voting electorate than they did on Election Day, Tuesday, November 4, 2008. Perhaps due to the early voting mobilization efforts by the Obama campaign and their allies which encouraged early voting by African Americans, black voters ended up casting 22 percent of the total EIP [early in-person] votes in the 2008 General Election even though they comprised approximately 13 percent of the State's total registered electorate."[181] With respect to the Sunday before Election Day, the findings were especially telling, with African Americans constituting 31 percent of early voters on the final Sunday of voting

before Election Day.[182] White voters, relatively speaking, had the lowest participation rates for Sunday early in-person voting. By comparison, African Americans had the highest rate on the first Sunday of early voting, while Latinos participated at the highest rate on the last Sunday of early voting (followed by African American voters).[183] The differential rates of early voting were part of the basis for the U.S. District Court for D.C.'s denial of preclearance to the five Florida counties that were covered under Section 5 when they attempted to implement the aforementioned statewide changes to early voting. The court recognized the potential for a racially discriminatory effect.[184]

One study conducted after the 2012 election concluded that the "effect of early voting changes reflected in H.B. 1355 was to inconvenience African Americans specifically."[185] The research found that the cutbacks led to more crowded polling places and that "voters who faced greater congestion, and presumably longer lines… were disproportionately African American."[186] Notably, beyond Florida, the report highlighted the increasing popularity of early voting among African Americans nationally. In the 2012 general election, the number of African Americans voting early in-person reportedly tripled compared to 2008. Similarly, this same figure doubled in the 2014 midterm election compared to the 2010 midterm.[187]

> **Notably, African Americans in Southern states continued to vote early in-person at higher rates than other groups: 41 percent of African Americans in the South voted early in-person, compared to 34.8 percent of white voters. Moreover, African-American early in-person voters in the South also outpaced this same group of African-American voters in all other regions of the U.S.[188]**

In 2013, North Carolina enacted a law, H.B. 589, that, among other measures, eliminated the first seven days of early voting, reducing the number of days to vote early in person from 17 to 10. In addition, the law eliminated the first Sunday of early voting. A number of civil rights groups, as well as the DOJ, have brought lawsuits challenging H.B. 589.

The data in North Carolina mirrors the findings in Florida regarding early voting:

- In the 2008 general election, African-American voters made up 22 percent of registered voters, but cast about 29 percent of early votes and about 32 percent of votes during the first week of early voting. About 71 percent of African American voters cast their ballot during early voting in the 2008 general election, compared to 51 percent of white voters.[189]

- In the 2012 general election, African-American voters made up an estimated 22 percent of registered voters, but were approximately 29 percent of early voters and 33 percent of voters in first week of early voting. About 71 percent of African American voters cast their ballot during early voting in the 2012 general election, as compared with 52 percent of white voters.[190] Over 36 percent of all North Carolinians who voted during the first week

of early voting in 2012 were African-American. Additionally, there was a notable peak in African-American participation during weekend voting, while weekend early voting for whites declined. African Americans cast 43 percent of all Sunday ballots.[191] The disproportionate use of early voting by African Americans in North Carolina has been confirmed by academic research.[192]

Cutbacks to early voting have also disproportionally affected African American voters in Ohio. A Lawyers' Committee analysis of voting patterns in 2008 in Cuyahoga County, which includes Cleveland, found that African-American voters used early in-person voting at a rate approximately 26.6 times greater than that of whites. Put another way, "African Americans accounted for nearly 78% of all early in person voters, compared to less than 7% for whites."[193] Similarly, in 2012, African American voters in Cuyahoga County utilized early voting at a rate more than 20 times greater than white voters. About 77.6 percent of early voters in Cuyahoga in 2012 are estimated to have been African American.[194]

Petee Talley, Secretary-Treasurer of the Ohio State AFL-CIO and co-chair of the Ohio Voter Protection Coalition, testified about the need for ongoing community voter education and outreach, at NCVR Columbus regional hearing. PHOTO CREDIT: JIMMEY MCEACHERN

In Franklin County, Ohio (which includes Columbus), African Americans represented 21 percent of all ballots cast in 2008, but cast 31 percent of early in-person ballots, while whites made up 74 percent of the electorate but cast only 65 percent of early in-person ballots. Overall, 13.3 percent of all African-American ballots cast in 2008 in Franklin County were done early in-person, as opposed to only 8 percent of white ballots.[195]

In 2011 and 2012, Ohio enacted legislation that, among other things, changed the last permissible day for early in-person voting by non-uniformed and overseas voters from the Monday before the election to the Friday before the election, thereby eliminating three early vote days. A federal court blocked implementation of the law and ordered the restoration of the three early vote days, however, because the law violated the 14th Amendment's Equal Protection Clause by treating uniformed and overseas citizens, and other voters, differently.[196] The judge noted:

> **On balance, the right of Ohio voters to vote in person during the last three days prior to Election Day—a right previously conferred to all voters by the State—outweighs the State's interest in setting the 6 p.m. Friday deadline. The burden on Ohio voters' right to participate in the national and statewide election is great, as evidenced by the statistical analysis offered by Plaintiffs and not disputed by Defendants[, and] the State's interests are insufficiently weighty to justify the injury to Plaintiffs.[197]**

Also in 2012, Ohio Secretary of State Husted issued Directive 2012-35, which required all counties in Ohio, regardless of size and other differences, to conduct early voting at a single site following a specific schedule set by the State. Directive 2012-35 eliminated early voting opportunities that African Americans had traditionally taken advantage of, including all weekend hours and certain evening hours.[198]

Subsequently, in late 2013 and early 2014, the Ohio legislature hastily passed S.B. 238, which eliminated the first week of early voting and, because that was the only week during which one could both register and vote, S.B. 238 eliminated the only opportunity for same-day voter registration. Several days later, Secretary of State Husted issued Directive 2014-06, forcing all counties to eliminate all evening early voting hours, all Sunday voting, and early voting on the Monday before Election Day.[199] On May 1, 2014, a coalition of civil rights organizations and churches filed a lawsuit challenging these changes.[200] According to the complaint, 157,000 Ohio citizens voted in 2012 during the periods that S.B. 238 and Directive 2014-06 eliminate for the 2014 election.[201] The plaintiffs' motion for a preliminary injunction was filed June 30, 2014 and remains pending.

The recent actions that Ohio's legislators and Secretary of State have taken to restrict early voting were taken in the face of well-publicized data demonstrating that cuts in early voting would disproportionately burden African-Americans.[202] In fact, statements and actions by public officials make clear that the effects of the cutbacks were well understood. For example, in the words of a local newspaper, a member of the Franklin County Board of Elections explained his support for the 2012 cutback like this: "I guess I really actually feel we shouldn't contort the voting process to accommodate the urban—read African-American—voter turnout machine."[203]

Finally, in Wisconsin, another state that has seen a number of voting controversies in recent years, Governor Scott Walker has signed a bill that eliminates weekend early voting altogether. Many in the State have expressed concern that the cutback will bear particularly heavily on Milwaukee voters, where a significant proportion of the State's minority population resides.[204]

"Even with extended hours, we still saw long lines on election days [in 2008 and 2012]… Assembly Bill 54 and Senate Bill 324 in our current legislative session would eliminate any weekend hours for in-person absentee voting and would not allow municipal clerks to offer hours later than 6:00 p.m. during the week. We believe the passage of this bill would absolutely devastate the ability of many voters marginalized in other ways to access their right to vote…" –Analiese Eicher, One Wisconsin Now, at the NCVR Minneapolis regional hearing.
PHOTO CREDIT: TIM RUMMELHOFF

IX. PROBLEMS AT POLLING PLACES

An accessible, fully-equipped, and functioning polling place is, of course, critical to the voting process. The recent history of voting discrimination and restricted ballot access for minority voters, however, contains reports of polling place closures in minority areas and jurisdictions' refusals to expand voting locations into more remote communities where minority voters reside. The record documented in the 2006 NCVR report also contains numerous examples of how such activities disadvantage minority voters. As is detailed in Chapter 7, implementation of language assistance requirements at the polls continues to be a problem; accessibility of polling places for people with disabilities, a major problem in American elections, will be addressed at length in the forthcoming report on election administration.

One common and well-publicized problem at the polls in recent elections has been long lines. Whether a reflection of inadequate staffing, too few voting locations, or problems with poll books, long lines on Election Day may be more than just an inconvenience; for some, long lines prevent or deter voting. Research on recent elections has shown that African-American and Hispanic voters are likely to experience longer wait times than white voters. One study using 2008 and 2012 post-election survey data concluded that minority voters waited longer than white voters at the polls. The average wait time for African Americans was highest at 24 minutes, followed by an average wait time of 19 minutes for Hispanic voters. By comparison, white voters waited an average of 12 minutes to vote. Notably, the authors point out that these disparities in wait time by race largely remained in place after controlling for state residence and voting mode (Election Day versus early voting).[205] Further, voters in urban areas waited longer to vote than their counterparts in suburban and rural areas.[206]

The experiences with long lines in particular states help illustrate these national findings. A study of precinct-level data, including closing times, in Florida from the November 2012 election found that "precincts with greater proportions of Hispanics—and in several counties, with high proportions of Blacks, as well as younger voters—had later closing times on Election Day relative to precincts with higher concentrations of White and elderly voters."[207] Long lines in minority communities were also a pressing issue during the 2004 election, as seen in Ohio. An investigation found that the "misallocation of voting machines led to unprecedented long lines[,]" which disenfranchised minority voters disproportionately.[208]

> **"In 2004, Election Day was a fiasco in many places around Ohio. Local, state, and national media covered the multitude of problems stemming from excessively long lines of voters waiting, many of them for hours on end. These lines led an estimated 130,000 voters to leave their polling locations without casting a ballot. African-American voters waited in line an average of three times longer than their white counterparts."**
>
> *Gary Daniels, Associate Director of the Ohio American Civil Liberties Union at the NCVR Columbus regional hearing*

Closing and Consolidating Polling Places

Closure of polling places serving minority voters continues to raise concerns about equal access to the ballot. For example, on October 8, 2010, plaintiffs in *Spirit Lake Tribe v. Benson County* secured a preliminary injunction under Section 2 of the VRA, which curtailed the North Dakota county's plans to close all but one of the eight voting locations in the county (citing financial reasons) and implement a mail-in ballot program.[209] The tribe was successful in keeping open the two polling places located on its reservation.[210] The federal court in Spirit

Lake Tribe agreed with plaintiffs that the severe reduction in voting locations would risk effectively disenfranchising a portion of the tribe's voters; noting the well-documented "historic pattern of discrimination suffered by members of [the tribe]," the court considered evidence that closing the voting locations on and near the reservation would likely have a disproportionate impact on tribal members, which supported the decision to require the county to keep open the two on-reservation polling places.[211] Tribal members testified that they would not be able to vote at the one proposed voting location because they lacked access to reliable public or private transportation, could not afford to pay for transportation costs, or were concerned about the distance from remote parts of the reservation to the one location.[212] In addition, members testified that a mail-in ballot process would be ineffective and undesirable.[213] The tribal members and the court were skeptical that the county could ensure that the tribe's sizable transient population would receive their ballots by mail.[214]

In reaching its decision, the court recognized that Spirit Lake's population was "more economically and educationally challenged" than the rest of the county, and had "staggering problems in areas including economics, education, housing, and employment."[215] The court further observed:

> **[T]here are burdens that fall on the voting process on the Spirit Lake Reservation that simply do not exist elsewhere in Benson County. Thus, a system that might be entirely appropriate for the County as a whole, could well create a significant burden on voting within the confines of the Spirit Lake Reservation.[216]**

In 2003, Bexar County, Texas announced plans to reduce the number of early voting polling places from 20 to 11, in the process eliminating the five such polling places serving the predominantly-Latino west side of San Antonio.[217] Bexar County moved forward with these plans, even though DOJ had yet to make a decision on the County's request for Section 5 preclearance. This led the Mexican American Legal Defense and Education Fund (MALDEF) to file a Section 5 enforcement action in federal court, which alleged that the county's changes would infringe on west side residents' right to vote by forcing them to go far from their homes to cast their ballots. Plaintiffs sought an injunction to prevent the closures.[218] The closures were enjoined shortly after MALDEF filed its action.[219]

In 2003, Monterey County, California announced plans to, *inter alia*, consolidate precincts and change the locations of polling places in predominantly Latino areas as part of the preparations for a then-upcoming special gubernatorial recall election.[220] According to testimony at the NCVR California state hearing from an attorney for the plaintiffs in a case challenging the changes, one consolidation would have moved a polling place nearly five miles away from its previous location in a predominantly Latino community into an area without easy access to public transportation.[221] Another would have forced voters residing

in predominantly Latino communities to cast their ballots at the Sheriff's Posse Club House, a hunting club in a predominantly Anglo neighborhood.[222] Plaintiffs brought suit, seeking to enjoin the recall election on the basis that, *inter alia*, Monterey County's plan to consolidate precincts and reduce the number of polling places was legally unenforceable due to the county's failure to secure preclearance of the proposed changes from the DOJ under Section 5 of the VRA.[223] After the federal trial court entered a limited temporary restraining order and ordered the county to show cause why a preliminary injunction halting any further election preparations should not issue,[224] Monterey County informed the district court that the proposed changes would not occur and withdrew the problematic polling place changes from DOJ's review.[225] While DOJ ultimately approved the voting precinct changes (minus the proposals at issue), it was action taken under Section 5 that led to the withdrawal of the problematic polling place consolidations.[226]

As set forth in testimony submitted at the NCVR hearing in Denver, in 2008 Alaska submitted for Section 5 preclearance a proposal to close polling places in several Native villages. DOJ responded with a More Information Request, at which point the State abruptly withdrew the proposal. The same witness testified that DOJ also blocked efforts to close polling places in Navajo Nation in Arizona.[227]

In 2006, DOJ objected to the reduction in the number of polling places and early voting locations for the North Harris Montgomery Community College District in Texas. Under the proposal, the site with the smallest proportion of minority voters was meant to serve 6,500 voters, while the most heavily minority site (79.2 percent African-American and Latino) would serve over 67,000 voters.[228]

Inadequate Polling Places

At the Pennsylvania state hearing, NCVR received testimony about the Lower Oxford East precinct in Pennsylvania, where 61.8 percent of the voting age population was African-American in 2008. According to a complaint filed against Chester County officials under Section 2 of the VRA, the polling place for that jurisdiction could only fit six voting booths and one optical scanner, had only one bathroom, and had no shelter for waiting voters.[229] During the 2008 primary election, it had to remain open until 10:30 p.m. to process all of the waiting voters.[230]

Local election officials, fearing even worse conditions for the general election, requested that the County Board of Elections move the polling place to Lincoln University, a historically black university that was the former, more spacious, site of the precinct's polling place.[231] The Board refused. According to the lawsuit, so many voters waiting in line needed restroom facilities that a campaign volunteer arranged for the delivery of six portable toilets at his own

expense.[232] Further, plaintiffs alleged that a Republican poll watcher challenged the identities of young African-American voters exclusively, even those with valid registration cards and photo ID, and that an election official dismissed voters' concerns about this.[233] As a result,

> **[t]he combination of an inadequately-sized polling place, unlawful challenges, failure of Voter Services to provide an up-to-date poll book and lack of other polling place resources created a perfect storm of long lines and disenfranchised voters of color.[234]**

One voter reportedly attempted to vote at three times throughout the day, but was unable to do so each time due to the long lines.[235] Others reportedly waited six hours or longer, with many leaving without having the chance to vote; one student was given an estimated wait time of eight hours.[236] In 2009, after receiving complaints about long lines during the 2008 election, the township relocated the polling place to a building that is "even farther away from campus, even less-accessible to African-American voters, and equally small."[237] The parties later settled the lawsuit, and the Board of Elections agreed to move the polling place back to Lincoln University's campus.[238]

On the right, Marian Schneider, Senior Attorney at the Advancement Project, testified at the NCVR Pennsylvania state hearing about the failure of a local board of elections to move a polling place in a predominantly African-American community to a larger, central location, resulting in excessively long lines and depressed turnout.
PHOTO CREDIT: BEN BOWENS

Barriers to Exercising Voting Rights for Native Americans

At NCVR's Denver regional and Arizona state hearings, Native American voting advocates spoke of Native American voters living in very rural areas without cell service, Internet, even roads, electricity, or running water, who had to drive an hour and a half each way to the nearest polling place.[239]

Witnesses at NCVR's Rapid City, South Dakota hearing testified that advocates in the State have been working for some time to get election officials to provide satellite offices for registration and in-person absentee voting—South Dakota's version of early voting—on Indian reservations. Currently, the only place to take advantage of the more than five weeks of early voting in most counties in South Dakota is at the county seat, typically a great distance away from reservation lands. The lack of early voting sites on reservations essentially means that most Native Americans in the county get no early voting and can only vote on Election Day.[240] For example, in Dewey County, South Dakota, which has a population that is 74 percent Native American, "over 60 percent of [the] population lives in Eagle Butte, which is 40 miles from the county seat in Timber Lake."[241] As Julie Garreau, an enrolled member of the Cheyenne River Sioux Tribe, testified, more than 30 percent of the population lives below the poverty line, and "many voters do not own reliable vehicles, or do not have the financial resources to make a trip to early vote."[242] Native Americans were able to work with county officials to set up a satellite office on the reservation.

In Shannon County, however, Native Americans were forced to file suit in 2012 under Sections 2 and 5 of the VRA, among other federal and state laws.[243] As the *Brooks v. Gant* lawsuit progressed, South Dakota officials and the county defendants changed their position, agreeing to provide the early voting at the satellite locations proposed by the plaintiffs through the year 2018. On August 6, 2013, given the resolution of the issue for the time being, the court concluded the plaintiffs could no longer show the required "immediate injury" and dismissed the lawsuit as unripe for consideration; the dismissal was "without prejudice," so the plaintiffs may file a new lawsuit in the future should the State fail to extend the satellite early voting on the reservation beyond 2018.[244]

The problems Native Americans in Montana face in using in-person absentee voting are similar. Mark Wandering Medicine, a member of the Northern Cheyenne Tribe, testified at the NCVR Rapid City hearing that poverty and traveling great distances to the county seat create barriers for Native Americans in his tribe to take advantage of in-person absentee voting; it is a two-hour drive one way from his home on the Northern Cheyenne Reservation to Forsyth, the county seat of Rosebud County, Montana.[245]

On October 10, 2012, Native Americans from Montana's Fort Belknap, Crow, and Northern Cheyenne Reservations brought suit seeking to open satellite county offices with in-person

absentee voting and late voter registration in Blaine, Rosebud, and Big Horn Counties. After a federal district judge in Missoula refused to dismiss the lawsuit,[246] the case settled out of court on June 10, 2014. Under the terms of the settlement, election officials agreed to open voting sites on reservations for two days a week during the month-long period during which Montana allows in-person absentee voting and late registration.[247]

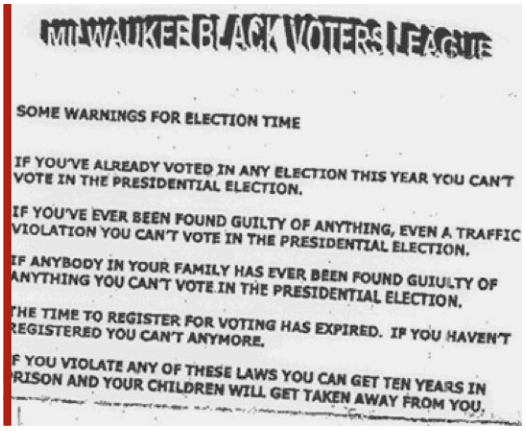
Native American plaintiffs also achieved a measure of success in challenging Arizona's 2004 voter ID law. Among other claims in the case, the Navajo Nation challenged the voter ID law based upon evidence that the law had a disproportionate effect on Native American voters.[247a] The claim was settled, with the State agreeing to change the types of ID permitted,[247b] and the amended list of acceptable IDs was precleared by the DOJ.

From Left, OJ Seamans Sr., Executive Director of Four Directions, and Bret Healy, consultant at Four Directions, testified at the NCVR Rapid City hearing. Healy testified about the the hardships and intimidation plaintiffs have faced in voting rights cases in Montana. PHOTO CREDIT: JOHNNY SUNDBY

X. VOTER INTIMIDATION AND VOTER CHALLENGES

Outright voter intimidation is sadly not a complete vestige of the past.

Although for the most part schemes designed to restrict voting that rely on physical violence have become rare, more sophisticated tactics, relying on the use of intimidating misinformation campaigns, most commonly in the form of flyers and mailings, are still frequent. For example, in 2004 in Milwaukee, a flier purportedly from the "Milwaukee Black Voters League" was distributed in African-American neighborhoods to discourage people from voting.


MILWAUKEE BLACK VOTERS LEAGUE

SOME WARNINGS FOR ELECTION TIME

IF YOU'VE ALREADY VOTED IN ANY ELECTION THIS YEAR YOU CAN'T VOTE IN THE PRESIDENTIAL ELECTION.

IF YOU'VE EVER BEEN FOUND GUILTY OF ANYTHING, EVEN A TRAFFIC VIOLATION YOU CAN'T VOTE IN THE PRESIDENTIAL ELECTION.

IF ANYBODY IN YOUR FAMILY HAS EVER BEEN FOUND GUILTY OF ANYTHING YOU CAN'T VOTE IN THE PRESIDENTIAL ELECTION.

THE TIME TO REGISTER FOR VOTING HAS EXPIRED. IF YOU HAVEN'T REGISTERED YOU CAN'T ANYMORE.

IF YOU VIOLATE ANY OF THESE LAWS YOU CAN GET TEN YEARS IN PRISON AND YOUR CHILDREN WILL GET TAKEN AWAY FROM YOU.

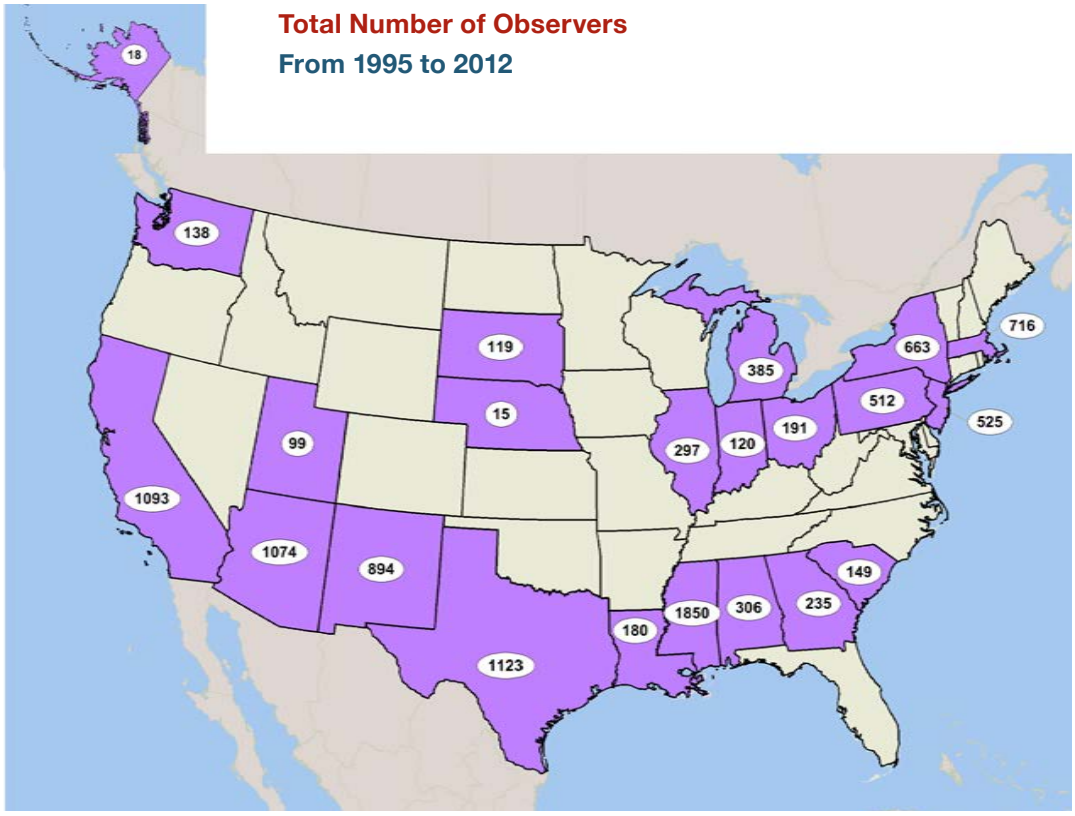
During the 2012 election, billboards were placed in predominantly minority areas in Cleveland and Cincinnati and later Milwaukee, with menacing warnings about voter fraud and the penalties for violations. The Lawyers' Committee used census tract population data to demonstrate that the signs were targeted at African-American communities. For example, one billboard was mounted in an area in Cleveland that was 96 percent black. The Lawyers' Committee sent a letter to Clear Channel, the owner of the billboard spaces, and that organization, along with several others, undertook a campaign to get the signs taken down. In its letter to Clear Channel, the Lawyers' Committee said the signs, "stigmatize the African-American community by implying that voter fraud is a more significant problem in African American neighborhoods than elsewhere," and the billboards "attach an implicit threat of criminal prosecution to the civic act of voting."[248] The company ultimately took down the signs after the client who paid for the billboards would not identify itself publicly.

Section 11(b) of the VRA states that "no person… shall intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for voting or attempting to vote." However, since the Act's initial passage in 1965, DOJ has filed suit for intimidation or deceptive practices under the VRA in only four instances, and only twice in recent years.[249] Though many have argued that 11(b) could be utilized more vigorously and that DOJ has interpreted it too narrowly,[250] the fact that it has not been used more often is mostly the result of the challenges in bringing an intimidation claim.[251] The Federal Prosecution of Election Offenses manual itself describes intimidation as being subjective and often without concrete evidence or witnesses.[252] The perpetrators, particularly of deceptive practices, are often difficult to find. This makes prosecutors reluctant to devote resources to pursuing such cases.

Federal Observers Deter Voter Intimidation

Another reason that DOJ has brought few intimidation cases has been because of its ability to send federal observers to the polls where such activities might take place. Where DOJ was concerned about potential problems on Election Day it frequently sent observers or attorneys, who deterred and at times could address intimidating or discriminatory acts at the time they were occurring. An enforcement lawsuit could also ensue from an observed incident.

Total Number of Observers
From 1995 to 2012

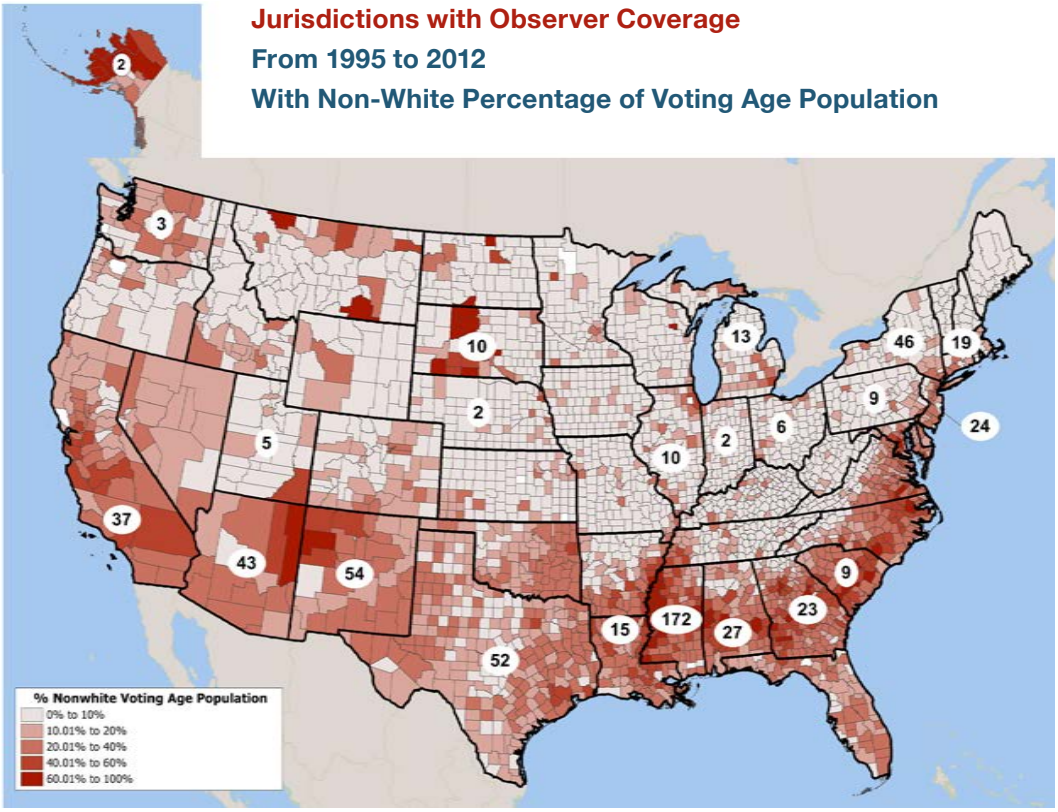


Under Section 3(a) of the VRA, a federal court may authorize observers where the court finds it is necessary to enforce the voting guarantees of the 14th and 15th Amendments during the course of a case or after a finding of intentional racial voting discrimination.[253] Prior to *Shelby County*, the Attorney General could send observers to political subdivisions covered under Section 4(b) of the VRA, if the Attorney General believed it was necessary to prevent constitutional violations regarding racial or ethnic voting discrimination.[254] In order to determine where observers were to be sent, the DOJ Voting Section looked at where it was likely that minority voters would confront barriers or intimidation. Federal observers wrote reports of what they saw, and submitted them to DOJ. The Voting Section reviewed these reports to determine whether further enforcement action should be taken.[255] A total of 153 counties and parishes in 11 states covered by Section 4(b) have been certified by the Attorney General for appointment of federal

observers: Alabama (22 counties), Alaska (1 county), Arizona (4 counties), Georgia (29 counties), Louisiana (12 parishes), Mississippi (51 counties), New York (3 counties), North Carolina (1 county), South Carolina (11 counties), South Dakota (1 county) and Texas (18 counties).[256] Thousands of observers have been deployed in the years since 1995.

Observers deterred election officials and others present at the polls from conducting discriminatory acts or engaging in harassment. Their presence also allowed for problems to be addressed immediately. As testimony given during the 2006 VRA reauthorization hearings by a long-time attorney with the Voting Section indicated,

Jurisdictions with Observer Coverage
From 1995 to 2012
With Non-White Percentage of Voting Age Population



> **the existence of Federal observers is crucial, and it's irreplaceable in the Voting Rights Act. After all, there's no other way for the law enforcement function of the Justice Department to be able to be performed with regard to harassment and intimidation and disenfranchisement of racial and language minority group members in the polling place on Election Day.[257]**

Observers report problems to a Civil Rights Division attorney at DOJ who can immediately discuss the problem with local officials, or if that is not sufficient, the Civil Rights Division may intervene with local officials directly. Reports can also be used for future litigation if necessary.[258]

As Congressman John Conyers described at a hearing regarding the reauthorization of this section of the VRA, "discrimination at the polls remains a problem. Where jurisdictions have a record of discrimination or current threats exist to ballot access, minority voters should not have to wait for federal assistance to come after the fact. Monitors play the important role of addressing concerns about racial discrimination and ensuring compliance, so that voters can rely on a fair process now, rather than waiting for litigation later."[259]

Unfortunately, at the time of this Report's publication, it appears that DOJ has suspended sending federal observers into polling stations in Section 4(b) jurisdictions, believing that it no longer has that legal authority under the Supreme Court's *Shelby County* ruling. However, the jurisdictions covered by Section 3(a) court orders are unaffected.[260]

Voter Challenges

One of most frequently-used methods of voter intimidation in contemporary times is actually one that has been used quite often throughout the darker side of our voting history: vote challengers at heavily minority polling places. This is a technique by which a group will use voter lists and send volunteers to challenge the eligibility of voters at pre-selected polling places, in numerous instances those that are predominantly African-American, and increasingly, Latino- or student-heavy.

A joint report by Demos and Common Cause reports the following:

> **[In 2010] an organized and well-funded Texas-based organization with defined partisan interests, the King Street Patriots, through its project True the Vote, was observed intimidating voters at multiple polling locations serving communities of color during early voting in Harris County [Texas.] […] In a 2011 special election in Massachusetts, a Tea Party group was reported to have harassed Latino voters and others at the polls in Southbridge, Massachusetts.**[261]

A witness at the Texas NCVR hearing noted that True the Vote activists were challenging voters on the basis, for example, that six or more people were living at the same address. Minority citizens are much more likely to live in multiple family and multi-generational homes.[262] Pew studies have found that indeed Hispanics (22 percent), blacks (23 percent) and Asians (25 percent) are all significantly more likely than whites (13 percent) to live in a multi-generational family household.[263]

In 2012, True the Vote announced that it would ramp up its activities, claiming it would recruit one million monitors to man the polls on Election Day. The group's national recruiter declared at its national summit that "his recruits' job is chiefly to make voters feel like they're 'driving and seeing the police following you.'" Tom Fritton of Judicial Watch has been a featured

At the NCVR Texas state hearing, Maureen Haver, a Common Cause Texas Board Director, testified about voter suppression tactics deployed in Harris County during the 2010 election cycle. PHOTO CREDIT: SAMUEL WASHINGTON

guest at True the Vote events, telling recruits prior to the 2012 election that "'[w]e are concerned that Obama's people want to be able to steal the election in 2012'" with the "'illegal alien vote'" and a "'food stamp army.'"[264]

In Massachusetts, NCVR heard testimony that local "voter integrity" groups in 2012 had observers challenging the ballots of those who brought someone to the polls to help them vote, anyone who was speaking Spanish, and people with Spanish sounding last names. In addition, according to testimony, "observers were directly confronting and engaging with voters in an intimidating manner, they were photographing their identification when it was presented to poll workers, and they were videotaping people."[265]

In North Carolina in 2012, the State Board of Elections itself reported a number of complaints about voter challenges and intimidation and issued a directive to county boards on how such activities should be stopped. The Board was compelled to clarify the illegal nature of such acts. The Board reported that campaign and party supporters were breaching the buffer zones of polling places and approaching voters, using aggressive and profane language in some instances. It further reported on a series of deceptive practices, including voters being told that they can vote by phone or online; that if they affiliated with a certain political party that they must vote on Wednesday, November 7, instead of Tuesday, November 6; that if they have an outstanding ticket they cannot vote; and that they are required to re-register in order to vote.[266]

The new all-encompassing election law passed in North Carolina may facilitate large-scale voter challenge efforts because challengers are no longer required to live in the precinct where they issue challenges. At the March 28, 2014 NCVR hearing in North Carolina, the Legal Director of the ACLU of North Carolina related that,

> **[j]ust last night in Buncombe County Voter Integrity Project challenged over 180 voters on the voter rolls in Buncombe County. [T]here are 80 precincts in Buncombe County. […] All of those challenges were to voters living in 11 precincts in the city center of Asheville, which is the only place in Buncombe County that has a sizable African-American population.[267]**

As described in Chapter 7, in Hamtramck, Michigan, DOJ filed a complaint after the November 2, 1999 general election, leading to a consent order.[268] On Election Day, more than 40 voters who were dark skinned or appeared to be of Arab background had been challenged by a group calling itself "Citizens for a Better Hamtramck" on the basis of citizenship, either before or after they had signed their applications to vote. As a result, election inspectors required those voters to take a citizenship oath as prerequisite to voting.[269]

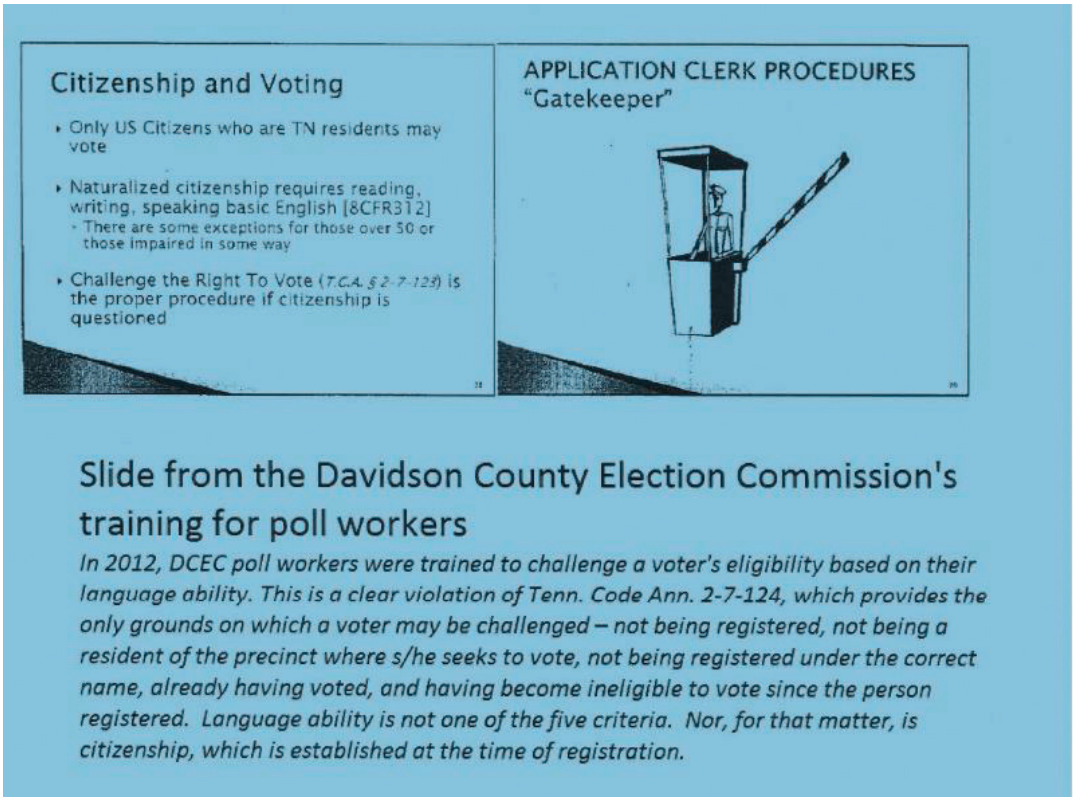
Other Recent Forms of Intimidation

While private individuals at the polling place are often a problem, sometimes it is poll workers and other people officially associated with elections operations who engage in intimidating behavior. The district court in *Shelby County v. Holder* noted that Congress, prior to reauthorizing the VRA, heard testimony that "[i]n *Shelby County*'s home state of Alabama, there were reports of voting officials closing the doors on African-American voters before the… voting hours were over," as well as "of white voting officials using racial epithets to describe African-American voters in the presence of federal observers."[270] The district court further related that a DOJ official "described the harassment of black voters by white poll officials in Alabama, including one instance in which a local poll official remarked while remarking in the presence of a federal observer," using a derogatory slur, that African-Americans, "don't have principle enough to vote and they shouldn't be allowed."[271]

In Iowa, the activities of the Secretary of State appear to have created an intimidating climate. According to testimony from the ACLU of Iowa provided to the NCVR, the Iowa Secretary of State's long-running and costly investigation into the alleged presence of noncitizens on the voter registration list has had an intimidating effect. The organization recounted having heard from two people that armed investigation agents showed up at their homes—after having questioned their friends, family, and neighbors—and demanded papers proving citizenship. So far only a handful of charges have been brought as a result of this investigation, and according to the ACLU, none of them indicate any intent by the individual to commit fraud.[272] Secretary of State Matt Schultz ordered a two-year investigation that culminated in a report issued in May, 2014 in which he announced finding a total of 117 possible cases of election misconduct over two election cycles, most of which were unrelated to noncitizens. Only 27 people have been charged with a crime—half of whom were persons with prior felony convictions who had voted but had not applied to the governor to get their voting rights restored—with six convictions, four dismissals, and one trial acquittal at the time of the release

of the report.[273] Schultz had used federal grant money to hire an investigator to conduct the investigation.[274]

In Tennessee, the NCVR learned of ways in which election officials were actually training poll workers to act in ways that could be intimidating and deter voters. At the Commission's hearing in Nashville, Eben Cathey from the Tennessee Immigrant and Refugee Rights Coalition testified about the poll worker training that had taken place in Davidson County, Tennessee in 2012. He showed NCVR a slide (shown below) from the training that reminded poll workers that only citizens are allowed to vote, incorrectly implying that to be eligible to vote people must be able to read, write, and speak basic English. The slide also noted that the proper procedure when a voter's citizenship is questioned is to challenge that voter's right to vote.[275]



Slide image submitted by Eben Cathey with the Tennessee Immigrant Rights Coalition at the NCVR Nashville regional hearing. The slide was used in a poll worker training in Davidson County.

In other cases, state legislatures have passed laws that would require poll workers to act in ways that could be suppressive. In *Boustani v. Blackwell*, a 2006 case, a federal district court found unconstitutional an Ohio statute allowing any election judge to challenge any voter's citizenship and requiring any naturalized citizen to produce their naturalization certificate in order to be eligible to cast a regular ballot.[276] The law had also stipulated that those naturalized

citizens whose eligibility was challenged but who were unable to provide a naturalization certificate would be required to cast a provisional ballot, which would only be counted if the citizen were to submit additional information to the Board of Elections within ten days.[277]

Noting that the law facially discriminated against naturalized citizens with regard to their right to vote, thereby casting them as second-class citizens, the court in *Boustani* made clear that for the statute to be valid the State would need to demonstrate a compelling governmental interest requiring the measure. The court found no compelling justification for the distinction drawn by the State between naturalized and native-born citizens.[278] The court further found that because replacing a lost or otherwise unavailable certificate of naturalization costs two hundred and twenty dollars, and the ability to pay this price bore "no relation to voting qualifications and burden[ed] a fundamental right of the citizenry," the requirement to produce a certificate of naturalization could not stand.[279] The court concluded by expressing "grave" concern about the effects of implementing the statute as it gave wide latitude to election judges or poll workers to profile voters—using their unbridled discretion to challenge based on "appearance, name, looks, accent or manner"—and found it "offensive to single out a voter in the public polling place, thereby subjecting him to embarrassment or ridicule while attempting to exercise a citizenship privilege."[280]

PHOTO CREDIT: ALLISON MEDER

"The truth is that here in North Carolina we are the canaries in the coal mine of a rollback of voting rights. This is the testing ground. This is today's Selma. This is what people would like, if they pass and get away [with] here, what some would like to see around the country…"

–Dr. Reverend William Barber, President of the NC NAACP State Conference and leader of the State's Moral Mondays movement.

Case Spotlight

The Long Struggle for Voting Rights at Prairie View A&M University

The longstanding struggle of students at historically-black Prairie View A&M University in Waller County, Texas for full and equal voting opportunities is illustrative of the evolution of tactics aimed at making voting more difficult. Prairie View A&M is located in Waller County, a small rural county outside of Houston. Over the past four decades, county officials have repeatedly taken actions that interfered with the voting rights of students at Prairie View A&M.

In the 1970s, the County required college students wishing to register to vote to complete a "Questionnaire Pertaining to Residence," which asked students various additional questions not required of other registrants. The questionnaire effectively precluded most students from registering to vote. Several lawsuits were brought challenging the practice. The U.S. District Court for the Southern District of Texas court invalidated the practice as a violation of the 26th Amendment,[281] and the Supreme Court summarily affirmed.[282]

Around the same time, DOJ, relying on Section 5 of the VRA, blocked a 1975 redistricting plan by the Commissioners' Court of Waller County. The DOJ's objection was based on the redistricting plan's failure to include many of the Prairie View A&M students in the population base for the reapportionment of Waller County, resulting in a malapportionment.[283]

In 1992, the local district attorney, Buddy McCraig, indicted 19 Prairie View A&M students for allegedly voting twice, once in their hometown and once at the school. After groups asserted that the indictments were an act of voter intimidation and the district attorney's actions were scrutinized, all 19 indictments were thrown out due to the lack of evidence. One of the indictments had involved an instance where a father and son with the same name had voted in the different locations.[284]

In 2003, a subsequent district attorney, Oliver Kitzman, also challenged the eligibility of Prairie View A&M students to vote, drafting a letter to the editor of the local paper publicly questioning the eligibility of students and threatening to prosecute students if they registered and voted in Waller County.[285] Civil rights groups sued Kitzman for voter intimidation under Section 11(b) of the VRA, and Kitzman agreed to a consent decree affirming students' right to vote.[286]

Shortly after the Section 11(b) lawsuit was filed in 2004, and a month before primary elections, the Waller County Commissioners' Court voted to reduce the availability of early voting at the polling place closest to campus, from 17 hours over two days to six hours in

one day. This was particularly significant because the primary was scheduled during the students' spring break, so students would have to vote early if they planned on leaving town for the break. Civil rights groups filed a Section 5 enforcement action seeking to prevent implementation of the change without preclearance, and the County restored the early voting hours. Those restored voting hours appear to have been critical to the outcome of the election, as approximately 300 Prairie View A&M students exercised the early voting option (compared to only 60 on primary day), and a Prairie View A&M student who ran for a seat on the Commissioners' Court narrowly prevailed.[287]

In 2006, after more than 700 votes cast at the city of Prairie View polling station were challenged as having been cast without proper voter registration verification, numerous unprocessed voter registration applications were uncovered in the Election Office.[288]

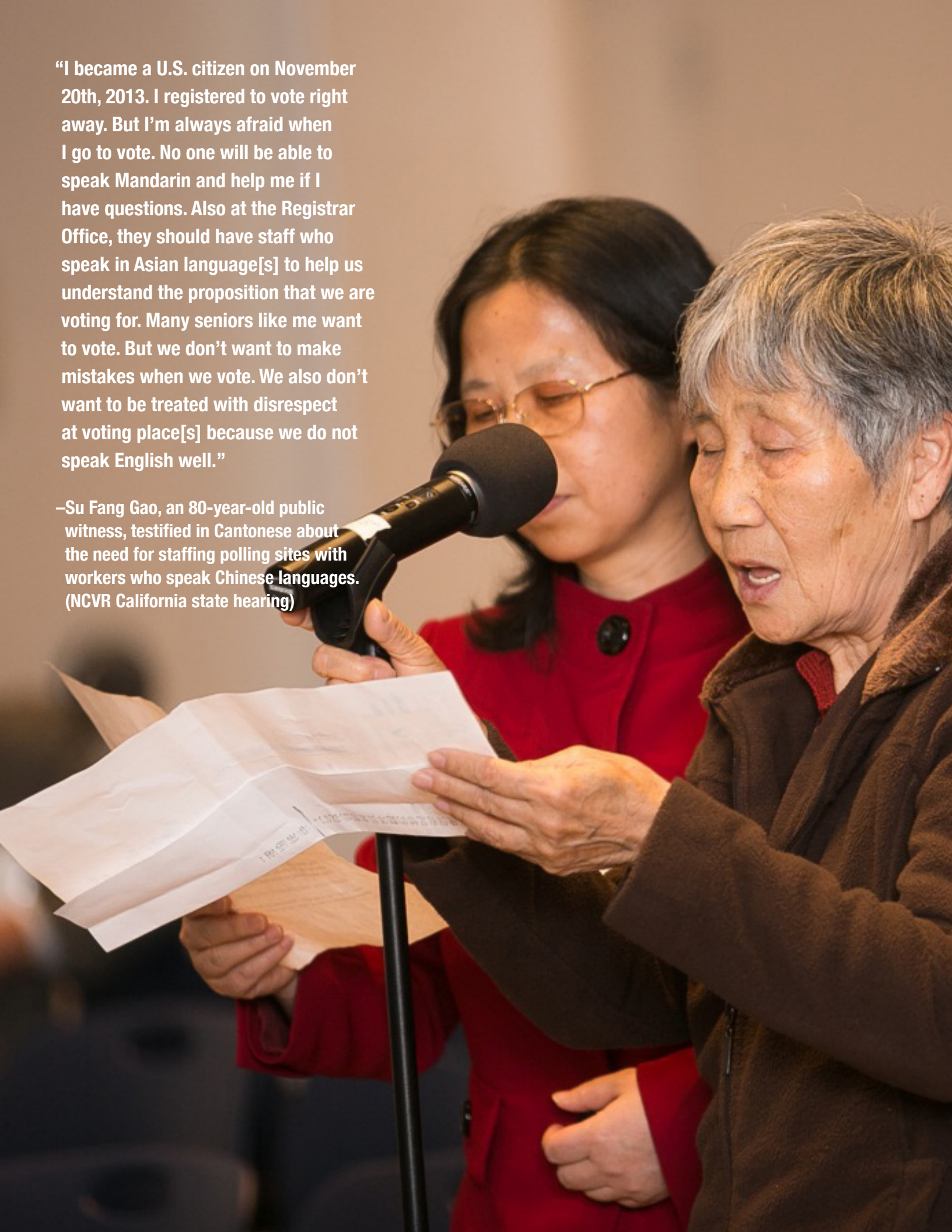
In 2008, the County initially decided to offer only one early voting site, which was seven miles from campus, for the November general election. Following pressure from activists who sought an on-campus voting location, the County agreed to move the early voting site to a different location one mile from campus, but declined to create an on-campus voting option.[289] Even as late as summer 2013, there was still no polling site on the Prairie View A&M campus. In July 2013, students drafted a letter to the Texas Secretary of State complaining of the lack of an on-campus voting option. The letter successfully pressured the Commissioners' Court, which finally agreed to install a polling site at the campus student center in September 2013.[290]

Without Section 5's protections, it may be difficult to respond as effectively to new threats to the voting rights of Prairie View A&M students.

PHOTO CREDIT: Samuel Washington

"In 2012 […] less than one-third of eligible youth went out to the polls in Texas. […] And 36 public institutions of higher education […] and dozens of quality private universities are available here in Texas, yet the voices of young people are still not being heard…"

Crystal Sowemimo, an intern for the Texas Public Interest Research Group, speaking on youth voter turnout in Texas. (NCVR Texas Hearing)



"I became a U.S. citizen on November 20th, 2013. I registered to vote right away. But I'm always afraid when I go to vote. No one will be able to speak Mandarin and help me if I have questions. Also at the Registrar Office, they should have staff who speak in Asian language[s] to help us understand the proposition that we are voting for. Many seniors like me want to vote. But we don't want to make mistakes when we vote. We also don't want to be treated with disrespect at voting place[s] because we do not speak English well."

–Su Fang Gao, an 80-year-old public witness, testified in Cantonese about the need for staffing polling sites with workers who speak Chinese languages. (NCVR California state hearing)

CHAPTER 7
Language Assistance for Limited English-Speaking Citizens

One of the primary ways that minority language voters have suffered discrimination is through the use of English-only elections. It is difficult for a voter who cannot understand the ballot or a voter registration form to effectively participate in the electoral process. Recognizing this problem, beginning in 1975, Congress found that the use of English-only elections in jurisdictions with a significant number of limited-English proficient (LEP) voting age citizens discriminated against those voters. Congress imposed affirmative obligations on those jurisdictions to provide materials and language assistance in the language of the particular minority group. As discussed below, these language minority provisions have resulted in substantial progress; however, lack of compliance with these legal protections is not uncommon. The denial or insufficiency of language assistance in certain jurisdictions where it is legally required continues to deny language minority groups equal access to the polls.

Today, there are over 25 million people in the United States who do not speak English proficiently. Over 57 million adults speak a language other than English at home.[1] This is a 148 percent increase since 1980. Moreover, the trends indicate that these numbers will only continue to grow over the next decade and beyond. Experts predict that by 2020 there will be somewhere between 64 and 68 million people in the United States who do not primarily speak English at home.[2] As language minority communities continue to grow in the coming decades, it will be crucial to ensure that they are equal participants in the democratic process.

I. FEDERAL VOTING PROTECTIONS FOR LIMITED ENGLISH PROFICIENT CITIZENS

There are several federal voting protections for minority language citizens contained within the Voting Rights Act (VRA), including the following:

- **Section 203** places an affirmative obligation on covered jurisdictions to provide all voting information such as registration and voting notices, forms, instructions, polling site assistance, and ballots in the applicable minority group language.[3] The covered minority groups under these provisions are voters who are of Spanish heritage, or are Asian Americans, American Indians, or Alaska Natives.

PHOTO CREDIT: ANDRIA LO

Drost Kokoye, a member of the public, spoke about the lack of minority language assistance at the Paragon Hills polling place in Nashville, Tennessee, at the NCVR Nashville regional hearing.
PHOTO CREDIT: JOSEPH GRANT

Every five years, the Census Bureau applies a formula to determine which jurisdictions are covered under Section 203 and for which language groups. For a jurisdiction to be covered under Section 203, the number of LEP, voting age citizens from the group must be either:

- More than five percent of all voting age citizens within a state or locality,
- More than 10,000 in number within a political subdivision, or
- In the case of a political subdivision that contains all or any part of an Indian reservation, more than 5 percent of the American-Indian or Alaska-Native voting age citizens within the Indian reservation.[4]

Additionally, the illiteracy rate of such language minority citizens in the jurisdiction must be higher than the national illiteracy rate.[5] Currently 25 states are either fully or partially covered by Section 203.

- **Section 4(e)** protects the right to vote of United States citizens educated in a language other than English in American-flag schools in any state, territory, the District of Columbia, or Puerto Rico. The provision provides that these citizens' voting rights cannot be denied because of their inability to read, write, understand, or interpret English.[6]

- **Section 208** provides that "Any voter who requires assistance to vote by reason of blindness, disability, or inability to read or write may be given assistance by a person of the voter's choice, other than the voter's employer or agent of that employer or officer or agent of the voter's union."[7]

- The applicability of one other provision, **Section 4(f)(4)**, is uncertain in light of the *Shelby County v. Holder* decision. Jurisdictions covered under the Section 4(b) formula—i.e., jurisdictions that held English-only elections and had a registration rate lower than 50 percent or a turnout rate lower than 50 percent for the November 1972 elections and where more than five percent of the voting age citizens were from a minority language group—were subject to Section 5 preclearance and were required to provide the same types of language assistance as specified by Section 203. The *Shelby County* decision eliminated Section 5 preclearance for these jurisdictions but did not address the law's constitutionality as it applies to the affirmative obligation to provide language assistance under Section 4(f)(4). Regardless, most of the Section 4(f)(4) jurisdictions are still obligated to provide language assistance under Section 203.

The scope of the minority language provisions has changed over the course of the VRA's history based on the conditions found by Congress at the time.

1965: Limited Protections for Language Minorities

The original Voting Rights Act included a limited, yet important, provision for some language minority citizens: Section 4(e). This provision provides that an eligible voter who was educated up to the sixth grade in an American public school where the instruction was conducted in a language other than English cannot be denied the right to vote because of his or her inability to read or write English.[8] The primary focus of this provision is on citizens who received their education in Puerto Rico. A challenge under Section 4(e) ended New York's English literacy test, which had been utilized to disenfranchise Puerto Rican voters in New York.[9]

1975: Significant Expansion of the VRA to Protect Limited English Proficient Citizens

In 1975, Congress expanded the Voting Rights Act to provide significant legal protections for language minority citizens. Congress found that these protections were necessary because

> **voting discrimination against citizens of language minorities is pervasive and national in scope. Such minority citizens are from environments in which the dominant language is other than English. In addition they have been denied equal educational opportunities by State and local governments, resulting in severe disabilities and continuing illiteracy in the English language.[10]**

Since "states and local jurisdictions have been disturbingly unresponsive to the problems of these minorities,"[11] Congress found it imperative to institute legal protections to ensure that language minority citizens are afforded equal access to voting, as required by the Fourteenth and Fifteenth Amendments to the United States Constitution. Among other things, Congress

added Section 203, which places affirmative language access obligations on jurisdictions[12] to provide "registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots… in the language of the applicable minority group as well as in the English language."[13]

Notably, the 1975 amendments also established that in some jurisdictions English-only elections constituted a "test or device" for purposes of coverage under Section 4(b) of the Voting Rights Act.[14] Preclearance and federal observer protections were therefore extended to any jurisdiction in which more than 5 percent of voting age citizens were of a single language minority, election materials had been prepared only in English in the 1972 presidential election, and less than 50 percent of voting-age citizens had registered for or voted in the 1972 presidential elections.[15]

Although the additions to the VRA were intended primarily to assist Spanish-speaking citizens, Congress also found "evidence that although other language groups do not suffer from the same pervasive voting discrimination which has been demonstrated for persons of Spanish origin, they do register and vote in fewer numbers than their English-speaking neighbors."[16] As a result, Native Americans and Asian Americans were also covered under the VRA's language assistance provisions.

1982: Reauthorization of Language Provisions for Ten Years

Originally enacted for a seven-year period, the language assistance provisions were reauthorized in 1982. During the debates surrounding reauthorization, Congress learned that in Texas the language assistance provisions contributed to a 64 percent increase in Mexican-American voter registration and a 30 percent increase in Hispanic elected officials in Texas over the prior four years.[17]

However, hostility and insufficient compliance with the language provisions continued. For example, U.S. Representative Robert Garcia testified in 1982 about the continuing unavailability of language assistance for language-minority voters, such as "election officials who did not permit bilingual poll workers to speak Spanish when that was what they were hired to do."[18] Finding that "[u]nless they have access to materials in a language they can understand, minority Americans clearly cannot exercise their right to vote"[19] and acknowledging its "obligation to erase discrimination against Hispanic Americans and other minorities,"[20] Congress reauthorized the language assistance provisions for another 10 years.

Guest Commissioner Kathay Feng, Executive Director of California Common Cause, received testimony at the NCVR California state hearing. PHOTO CREDIT: ANDRIA LO

1992: Extension of the Coverage Formula for Section 203

In 1992, Congress not only reauthorized the existing language assistance provisions but extended them to "provide coverage for jurisdictions with significant populations which currently do not provide language assistance under Federal mandate."[21] It did this by extending the language assistance coverage formula to provide two additional criteria for coverage.

First, the 1992 amendments added the provision that a political subdivision is covered if "more than 10,000 of the citizens of voting age… are members of a single language minority and are limited-English proficient,"[22] and if the illiteracy standard is also met. The House report explained that "[d]uring the period from 1982 until the present, the need for a numerical benchmark became clear, so that jurisdictions with large language minority populations that do not meet the 5 percent trigger" could otherwise attain coverage.[23] The House report found that—under the old formula—Latino, Asian-American and Native-American communities were insufficiently protected.[24] As such, the change was intended to address the fact that some language minority communities, though sizeable, are located in such populous areas that they do not constitute more than five percent of the population.[25] This 10,000 citizen benchmark has been particularly crucial for Asian-American citizens. "After the 1982 reauthorization, no Asian-American community outside of Hawaii qualified for assistance. Under the 1990 census, only Chinese Americans in San Francisco County would qualify on the mainland… [A] 10,000-citizen benchmark [resulted in] coverage for three additional Asian languages and five additional counties, including three large counties in the State of New York."[26]

Secondly, Congress also provided that "in the case of a political subdivision that contains all or any part of an Indian reservation," a jurisdiction is covered if "more than 5 percent of the American Indian or Alaska Native citizens of voting age within the Indian reservation are members of a single language minority and are limited-English proficient,"[27] and the illiteracy standard is met. Experience had shown, the House report stated, that "the American Indian and Alaska Native populations were not receiving the type of assistance they needed."[28] Reservations, which have relatively small populations, often have boundaries that do not coincide with county or state lines, as many reservations were established before the states or counties came into existence.[29] The division of Native American communities across multiple states or political subdivisions allowed even areas with a relatively strong Native American presence to avoid coverage.[30] Thus, the House report found, "the 5 percent trigger has proven to be ineffectual in the Native American context."[31]

Beyond expanding the reach of the language assistance provisions, Congress also reauthorized them for an additional 15 years. It found that "the four language minority groups covered by section 203—Hispanics, Asian Americans, American Indians and Alaska Natives—continue to experience educational inequities, high illiteracy rates and low voting participation."[32] Congress recounted numerous examples of the barriers to literacy and participation faced by non-English speakers, such as the fact that in 1991, Latinos age 25 and older had a high school graduation rate of only 51.3 percent, compared to 80.5 percent for non-Latinos.[33] While the language assistance provisions had produced a "closing of the gap between Hispanic and Anglo voter registration in areas where language assistance is provided"[34] and had not proved to be burdensomely costly,[35] Congress found that persistent disparities in access to the electoral process between English and non-English speakers justified the language assistance provisions' further extension.

2006: Extension of Section 203 for 25 Years

In 2006, Congress reauthorized the provisions for an additional 25 years, and emphasized that covered jurisdictions "were required to provide language minorities with not only bilingual election materials but also bilingual election assistance, including oral assistance and other written election and voting assistance, such as instructions, guides, forms, notices, and ballots, in response to the needs demonstrated by limited English speaking citizens."[36] The House Judiciary Committee Report accompanying the bill detailed a litany of problems facing voters with limited English proficiency and/or little education. For example, it recounted testimony that during the 2004 election in Pima County, Arizona, many LEP Latino voters were denied equal access to the electoral process due to a lack of bilingual ballots.[37] It noted that the Department of Justice (DOJ) had litigated an increased number of Section 203 cases since 2000, which the report described as "critical to protecting language minority voters."[38]

II. PROGRESS AND BARRIERS FOR LIMITED ENGLISH PROFICIENT VOTERS

The VRA's language assistance provisions are essential to ensuring equal participation for language minority communities that have historically been the targets of discrimination. Although voter participation rates for Asian Americans (47.3 percent), Latinos (48 percent),[39] and American Indians and Alaska Natives (46.6 percent)[40] continued to lag behind to that of whites (64.1 percent) in 2012,[41] the VRA's language protections have positively influenced voter participation and turnout. Following the enactment of the language assistance provisions of the VRA, voter registration and turnout rates for Native Americans, Asian Americans, and Latinos have greatly increased:

- Following the 1992 extension of coverage under Section 203 to jurisdictions that had more than 10,000 LEP language minority voting age citizens, "the number of Asian-Americans registered to vote increased dramatically. Between 1996 and 2004, Asian-Americans had the highest increase of new voter registration[s], approximately 58.7 percent. During that same period, Asian-Americans experienced an increase in turnout of 71 percent."[42]

- The Latino voter registration rate has nearly doubled since the addition of the language assistance requirements in 1975. Additionally, between 1980 and 1990, Latino "voter participation increased [at] five times the national rate."[43]

- For Native Americans, between 1975 and 2013, in covered counties "[r]egistration and turnout increased between 50 percent and 150 percent."[44]

Studies and surveys have nearly uniformly shown a substantial increase in voter participation when language materials and assistance are provided—and by implication, participation is lower than it would be when language assistance is not provided.[45] For example, one witness testified at the National Commission on Voting Rights (NCVR) California state hearing that, "in San Diego County, [ ] once the county adopted a comprehensive [language assistance] program, voter registration increased by 20 [percent] in the Filipino American community and increased by 40 [percent] in the Vietnamese American community."[46]

A recent study found that even controlling for other variables, a county that is covered by Section 203 has a Latino voter turnout that is 15 percent higher than a similarly situated county that is not covered; counties with Spanish-speaking staff see Latino registration that is 6 percent higher than those without such staff; counties that provide voting materials in Spanish have a 4 percent higher Latino voter registration rate; and, finally, that "[a]ll other things equal, a county covered under Section 203 has Latino voter turnout that is 11 percent higher than non-covered counties."[47] Moreover, Latino voter registration in covered counties is almost 15 percent higher than in non-covered counties.[48]

Despite its effectiveness, some jurisdictions continue to fail to comply with Section 203. A 2005 study found that of jurisdictions covered for an Asian, Spanish, or Native language, a large number failed to provide at least one element of the language assistance required.[49] A memo provided to the Presidential Commission on Election Administration states flatly, "Despite an array of federal, state, and local laws and practices requiring accommodations for voters of limited English proficiency, the need for assistance is often unmet."[50] The memo cites numerous recent problems, including poor and inaccurate translations that could have impacted voters' ability to cast a meaningful ballot.[51]

On the left, Henry Yee, Co-Chair of the Chinatown Residents Association in Boston, testified at the NCVR Boston regional hearing on the need for Chinese language ballots in the City of Boston. He said, "The biggest right that we enjoy as American citizens is the right to vote, and because of the language barrier, a lot of times when these citizens will go and vote, it's hard for them to tell on the ballot which—which one is maybe Bush or Obama, and there's a lot of mistakes that would occur when they're trying to vote."
PHOTO CREDIT: MEREDITH HORTON

There are several recent examples of significant translation errors. In 2012, Maricopa County, Arizona published the wrong election date in the Spanish translation of official election materials, listing the election date as November 8 instead of November 6.[52] The same problem was repeated on Spanish-language bookmarks distributed at a voter-education event.[53] In 2012, the Spanish translation of Maryland's ballot summary misstated the proposed effect of the voter initiative on same-sex marriage.[54] "Barack Obama" was misspelled as "Barack Osama" on New York's absentee ballots for Spanish speakers in 2008, and a 2010 ballot in Massachusetts had to be reprinted when it improperly spelled the word "Alguacil" (Spanish for "sheriff") as "Aguacil" (Spanish for "dragonfly").[55]

In another memo for the Presidential Commission on Election Administration, it was noted that one in seven jurisdictions could not provide researchers registration materials in required languages, one in four did not have the necessary personnel to provide assistance, and one-third failed to provide either translated materials or bilingual personnel.[56]

Additionally, at the California state hearing of the NCVR, Deanna Kitamura, a senior staff attorney for the Voting Rights Project of Asian Americans Advancing Justice of Los Angeles, told the Commission of serious failures to comply with Section 203 obligations for Asian languages during the 2012 election, including missing translated materials and the absence of bilingual poll workers.[57] The Commission further received testimony stating that the

Department of Justice has filed nine lawsuits for failure to comply with Section 203 in California since 2004.[58]

At the NCVR Pennsylvania state hearing, Jerry Vattamala, an attorney for the Asian American Legal Defense and Education Fund, talked about voting accessibility for language minorities in Philadelphia. The City agreed to provide voting assistance in Chinese, Khmer, Korean, and Vietnamese. Vattamala remarked, "Since that time, they have significantly backslid each successive election, until the point in 2012 where there were only four Asian language interpreters for the entire city… [In] South Philadelphia… there was long lines of Vietnamese-American voters that needed language assistance, but there was no interpreter."[59]

The Commission also heard about a failure to provide language assistance for Haitian Creole speakers in several counties in Florida. Until 2006, Miami-Dade County was required by a consent decree to provide Creole language assistance and hire Creole-speaking poll workers. However, by 2012, Creole-speaking voters in Palm Beach, Broward, and Miami-Dade Counties reported "that they did not have adequate access [to] translation or literacy assistance." In some cases this led to voters mistakenly invalidating their ballots.[60]

The impressive gains in voter registration and participation for LEP voters after the enactment of the VRA's language minority provisions are a welcome sign of progress. However, the continued reports of insufficient compliance with language assistance requirements and hostility toward LEP voters in some jurisdictions, as illustrated by testimony before the NCVR and the litigation summaries below, highlight the need to continue working to ensure true equal and meaningful access to voting throughout the United States.

III. EXAMPLES OF RECENT LANGUAGE ACCESS LITIGATION

Between 1995 and 2014, there have been 58 successful language minority cases and settlements (matters) throughout the United States (see Table 4 in Chapter 2 for a table outlining the languages and states involved). A great majority of these cases involved Spanish-speaking voters. A breakdown for the matters involving different language minorities is as follows:

- 46 matters involved Spanish.
- Ten discrete matters involved Asian languages: Seven involved Chinese, four involved Vietnamese, two involved Korean, one involved Japanese, one involved Bengali, one involved Tagalog, and one involved Ilocano.

- Five discrete matters involved a Native American language: Three involved Navajo, two involved Keresan, one involved Lakota, and one involved Yup'ik.

- One matter involved Creole.

Some of these recent matters are summarized below.

Refusal to Provide Language Assistance

In *Nick v. Bethel*,[61] the State of Alaska entered into a settlement agreement as a result of its longstanding disregard for the federally protected voting rights of its Native citizens. The Bethel Census Area is 81.6 percent Alaska Native or American Indian, and its most populous town the City of Bethel has a population that is 61.8 percent Alaska Native or American Indian. Yup'ik is the most common native language in Alaska, and many elders cannot read or speak English. Language assistance is especially important in Bethel because the illiteracy rate among the Eskimo limited-English proficient population is 21.46 percent, almost 16 times the national illiteracy rate of 1.35 percent.[62] However, plaintiffs contended that the State failed to provide the language assistance required by Section 203 of the VRA.

Yup'ik is historically a written language, and the State of Alaska has provided other, non-election documents in Yup'ik.[63] The City of Bethel was continuously covered by Section 4(f)(4) since October 22, 1975.[64] Despite this, plaintiffs, who were illiterate in English, alleged that Bethel had falsely told Yup'ik-speaking voters that they must go into the voting booth alone and that no one may see their votes, denied voters their right to select or receive assistance from the assistor of their choice, required Yup'ik-speaking voters to be assisted by poll workers not fluent in Yup'ik, and required that all assistance take place outside the voting booth.[65] In 2002 and 2004, the DOJ sent letters to remind Bethel of the VRA's bilingual election requirement.[66]

The State's response to the litigation was characterized by a high degree of resistance and hostility. The district court found that "evidence of past shortcomings justifies the issuance of injunctive relief to ensure that Yup'ik-speaking voters have the means to fully participate in… State-run elections."[67] Although the State had been "covered by Sections 203 and 4(f)(4) for many years[, it] lacks adequate records to document past efforts to provide language assistance to Alaska Native voters" and "the revisions to the State's minority language assistance program, which are designed to bring it into compliance[,] are relatively new and untested."[68] In granting a preliminary injunction ahead of the 2008 elections to obligate the State to provide language assistance to Yup'ik voters (including translators, sample ballots, and a Yup'ik-English glossary of election terms), the district court observed that

> **the State "had failed to […] provide print and broadcast public service announcements (PSA's) in Yup'ik, or to track whether PSA's originally provided to a Bethel radio station in English were translated and broadcast in Yup'ik; ensure that at least one poll worker at each precinct is fluent in Yup'ik and capable of translating ballot questions from English into Yup'ik; ensure that 'on the spot' oral translations of ballot questions are comprehensive and accurate, or require mandatory training of poll workers in the Bethel census area, with instructions on translating ballot materials for Yup'ik-speaking voters with limited English proficiency."[69]**

The State argued that because it had already begun to take steps to remedy its defective language assistance program, an injunction was not necessary, an argument that the district court rejected because of the long history of noncompliance.[70]

Effective Minority Language Assistance Leads to Electoral Success

A 1999 case filed in Passaic County, New Jersey, illustrates the impact of increased compliance with Section 203 of the VRA.[71] Starting after World War II, Passaic County experienced an influx of Latino residents, and eventually became covered by Section 203 in 1984.[72] Latino presence continued to increase, going from 21.7 percent of the county population in 1990 to 30 percent in 2000. The County, however, had failed to comply with the language assistance requirements of state and federal statutes, which resulted in a state court invalidating the result of the Patterson city council elections in 1986 and ordering the County to provide bilingual poll workers in future elections.[73] Over the next several years, the County continued to disenfranchise Latino voters by failing to comply with the court order. Latino voters continued seeing a lack of Spanish-speaking poll workers, insufficient Spanish-language materials at the polls, failure to advertise election information in Spanish-language media, as well as ethnically derogatory remarks by poll workers and their refusal to allow voters to obtain assistance in voting by a person of their choice.[74] Eventually in 1999, the DOJ filed suit, which resulted in a consent decree, but the County failed to comply.[75] In 2000, the DOJ filed an application to hold the County in contempt, and under an agreed order, the court appointed an independent elections monitor, granting him sweeping authority to bring the County into compliance with its language assistance obligations.[76] By May 2002, vast improvements had been made, including:

- the appointment of the County's first Latino member to the four-member Board of Elections;
- the appointment of a Latino to a senior position in the County's elections office (i.e., deputy superintendent of elections);

- registration of thousands of new Latino voters; and
- increasing availability of Spanish-language materials at the polls and a record-breaking Latino voter turnout.

These improvements were followed in short order by the election of the first Latino member of the County Board of Freeholders and the election of the first Latino mayor in Passaic City.[77]

Similarly, in 1998, the Department of Justice filed a lawsuit against the City of Lawrence, Massachusetts, on behalf of Latino citizens, some of whom were LEP voters.[78] The City of Lawrence had been covered under Section 203 since 1984; however, "the jurisdiction had done little to comply with" its obligations.[79] Along with vote dilution claims relating to the election systems for city council and school committee, the lawsuit alleged that the City had (1) failed to provide election-related materials in Spanish, as required by Section 203; (2) failed to assign Latino poll workers on the same basis as whites, in violation of Section 2; and (3) provided ineffective oral and written bilingual assistance and discriminatory poll worker assignments, in violation of Section 2.[80] In 1990, Latinos comprised 41.6 percent of the Lawrence population and 34.1 percent of the voting age population. As of 1997, approximately 31 percent of Lawrence's registered voters were Latino. Importantly, 51.8 percent of Latino voting age citizens (or 12.8 percent of all voting age citizens) were LEP.[81]

In September 1999, the City entered into a settlement agreement with the DOJ, which, among other things, required the city to (1) hire a coordinator to implement the language access program;[82] (2) provide Spanish translations of all election-related information;[83] (3) provide bilingual poll workers at each precinct; and (4) assign Latino poll workers in each precinct that was proportionate to the share of Latino registered voters in the precinct.[84]

The settlement agreement had a major impact. Previously, only one Latino had been elected to the City Council in its history, and that candidate had run from a majority-Latino district.[85] "In the first election after the settlement, three Latinos were elected to the nine-member City Council."[86] One of these candidates, Marcos Devers, won running at-large. Devers had lost four previous times in at-large elections for City Council.[87] Later, in 2009, William Lantigua was elected mayor of Lawrence, making him the first elected Latino mayor in the State of Massachusetts.[88]

A third matter that highlights the positive impact of Section 203 compliance involved Harris County, Texas. Though the County took some steps to comply in 2002 when it was first required to provide assistance in Vietnamese under Section 203,[89] it did not translate its electronic ballot. According to Trang Q. Tran of the Asian American Legal Center, while the remedy had "been to provide paper templates in [the] Vietnamese language to be used with

the E-Slate machines in the polling booths" these were, at times, denied to Vietnamese voters requesting them, or they arrived late to the polling locations and were not distributed.[90] After the November 2003 election, the County and the DOJ arrived at an agreement, which resulted in the translation of the County's ballot into Vietnamese, the hiring of a Vietnamese staff member in the county clerk's office, and the staffing of precincts with a significant number of Vietnamese-speaking poll workers. These changes resulted in the doubling of Vietnamese-American voter turnout,[91] and "are probably responsible, in part, for the [2004] election of Hubert Vo, the first member of the Texas legislature of Vietnamese descent."[92] Vo defeated "the incumbent chair of the Appropriations Committee by sixteen votes out of more than 40,000 cast."[93]

Hostility Toward Limited English Proficient Voters

On the left, Ana Sostre-Ramos testified at the NCVR Pennsylvania state hearing about Spanish-speaking voters being turned away at residential polling sites in Philadelphia. PHOTO CREDIT: BEN BOWENS

In July 2008, DOJ filed suit against Salem County, New Jersey, in *United States v. Salem County*, alleging violations of Sections 4(e), 208, and 2 of the VRA related to Puerto Rican and other Latino voters in Penns Grove, a Borough of Salem County.[94] DOJ claimed that Salem County and Penns Grove officials failed to translate ballots into Spanish, prohibited family members or other people from assisting voters with limited English skills, interfered with assistance when it was allowed, directed hostile or discriminatory remarks to Latino voters at elections, turned away Latino voters, and committed other violations of the law.[95] On the same day DOJ filed its complaint, it entered into a settlement agreement with Salem County to resolve the dispute, and the court approved the settlement agreement shortly after it was filed.[96]

In another case in Pennsylvania, *United States v. Berks County*, language issues joined with hostile actions led the court to require Berks County to provide Spanish language assistance. In this case, the DOJ brought suit under Sections 2, 4(e), and 208 (the jurisdiction was not covered by Section 203). The court found that poll workers made discriminatory remarks to Latino voters, prevented and discouraged them from voting (e.g., because they could not understand their names or refused to "deal" with Latino last names),[97] and treated them differently with respect to voter identification requirements—they demanded photo identification from Latino voters even though such identification was not legally required in order to vote in the State.[98] The court also found that the County did not provide bilingual oral and written assistance at the polls and barred Latino voters from bringing in people to assist them.[99] In granting the United States' motion for preliminary injunction, the court ruled that the lack of bilingual materials and poll workers had a "severe" impact on limited-English proficient voters.[100] In that same order, the court noted the problems in voting experienced by a woman born in Puerto Rico who was unable to read the English-language ballot, and consequently pushed all the buttons on the ballot and was unsure who she had voted for.[101]

Moreover, the Berks County government had been made aware of the above issues by the Department of Justice four separate times between 2001 and 2002—after four elections—but the County still failed to take action to remedy the situation.[102] The district court granted permanent relief on August 20, 2003.[103] The permanent injunction authorized the appointment of federal observers and ordered, among other things, that the County: (1) provide bilingual election materials; (2) provide trained bilingual poll workers and interpreters; (3) provide dedicated phone lines staffed by trained bilingual employees; (4) provide training for all poll workers to make them aware of voting rights and compliance with the VRA; and (5) appoint language coordinators to hold regular meetings with the Latino community and investigate and report on any complaints related to hostility toward Latino voters.[104]

> **"In 2012 , APIA Vote-Michigan […] [found that m]any poll sites failed to provide Bengali ballots, make translated materials available, or provide interpreters. […] In one case […] the translated sign displayed next to the Voter Bill of Rights had nothing to do with voter […] rights at all. Poll workers also complained that voting machine scanners would not read the translated Bengali ballots," testified Theresa Tran of APIA Vote-Michigan at the NCVR Michigan state hearing.**

The case *United States v. City of Hamtramck*, Michigan is an additional example of the interconnection between racial hostility and minority language issues. Though this case was brought under Sections 2 and 208 of the VRA because Hamtramck was not covered under Section 203, a substantial part of the remedy involved requirements for language assistance. A group of Arab citizens in Hamtramck, an enclave surrounded by the City of Detroit, had their right to vote challenged and were not allowed to vote in a 1999 election until they

recited an oath of citizenship—even when some were able to produce an American passport. The challenges were made by a "group named Citizens for a Better Hamtramck…, which had registered with the city clerk to provide challengers for the city elections in an effort to keep the election 'pure.'"[105] In 2000, a court entered a consent decree:

> **"order[ing] the city to establish a program to train election officials and private citizens regarding the proper grounds for election challenges." The order also required the placement of bilingual poll workers at every polling location in Hamtramck on Election Day and assigned federal observers to ensure the city's compliance with the order.[106]**

There continued to be problems in Hamtramck after the consent decree, including the City's failure to hire sufficient numbers of bilingual poll workers. This led the court to extend the consent decree to 2004, amending it to require at least two bilingual poll workers in every precinct for the assistance of Arab-American voters.[107]

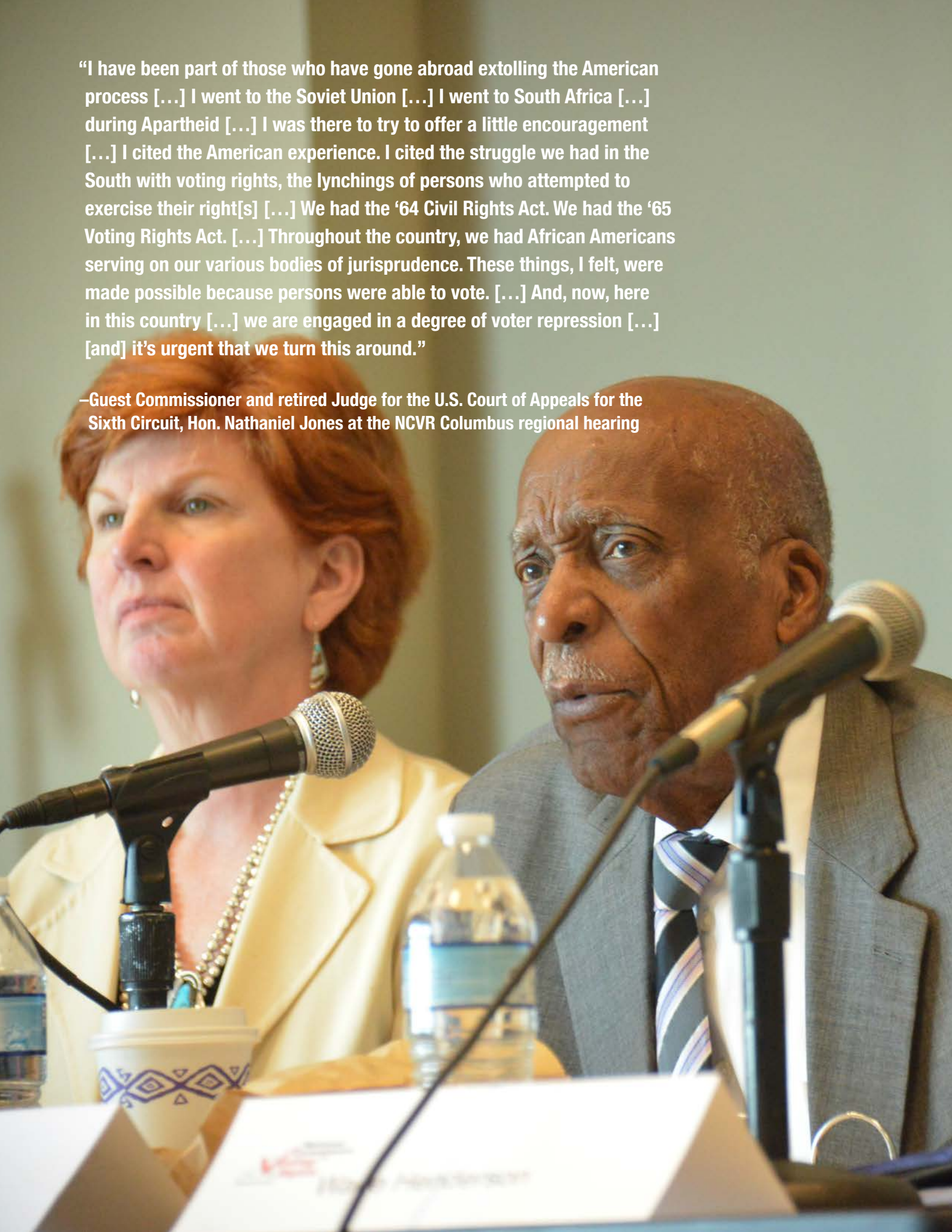
Case Spotlight
California's English-Only Initiative and Recall Petition Process

A major barrier identified by witnesses from the Greenlining Institute and the Mexican American Legal Defense and Educational Fund (MALDEF) during the NCVR California state hearing is that, according to a ruling by the U.S. Court of Appeals for the Ninth Circuit, individuals and organizations that circulate recall petitions and initiatives for voter signatures may do so only in English without violating Section 203 of the VRA. California's ballot initiative process, established in 1911, plays a crucial role in determining public policy in California. However, because initiative petitions may be circulated in English only, LEP voters are subject to manipulation by unscrupulous paid signature gatherers who misinterpret or deliberately lie about the substance of the initiative the LEP voter is being asked to support. In *Padilla v. Lever*, an en banc panel of the Ninth Circuit determined that the scope of Section 203 is limited to "voting materials" provided by the government, which does not include recall petition materials.[108] In that case, plaintiffs challenged a recall petition that was circulated in English in a district with a high concentration of LEP voters. MALDEF, who represented the challengers, testified that a number of people signed the petition after being told that they were signing in support of something else, and that the petition resulted in the recall of a school board member who was supported by the Latino community, according to MALDEF.

At the NCVR California hearing, MALDEF President Thomas Saenz testified about the barriers Latinos face when voting in English-only elections. PHOTO CREDIT: ANDRIA LO

“For Latino citizens that speak little English, [much recent research shows that] access to Spanish ballots […] and language assistance increases and influences election turnout.”

– Dr. Mindy Romero, Director of the California Civic Engagement Project at the UC Davis Center for Regional Change (NCVR California hearing)



"I have been part of those who have gone abroad extolling the American process […] I went to the Soviet Union […] I went to South Africa […] during Apartheid […] I was there to try to offer a little encouragement […] I cited the American experience. I cited the struggle we had in the South with voting rights, the lynchings of persons who attempted to exercise their right[s] […] We had the '64 Civil Rights Act. We had the '65 Voting Rights Act. […] Throughout the country, we had African Americans serving on our various bodies of jurisprudence. These things, I felt, were made possible because persons were able to vote. […] And, now, here in this country […] we are engaged in a degree of voter repression […] [and] it's urgent that we turn this around."

–Guest Commissioner and retired Judge for the U.S. Court of Appeals for the Sixth Circuit, Hon. Nathaniel Jones at the NCVR Columbus regional hearing

CONCLUSION

This report sets forth in substantial detail the breadth and depth of how election laws and practices adopted or implemented since 1995 have had a negative and disproportionate impact on the full and equal participation of African-American, Latino, Native American, and Asian voting age citizens.

Voting Rights Act violations, other than those related to language assistance, remain most concentrated in the jurisdictions that were formerly covered by Section 5. Although the full impact of the *Shelby County* decision and its effective nullification of Section 5 cannot be fully comprehended so soon after the decision, the immediate reaction of several formerly covered states has been to implement voting changes that a federal court or the Department of Justice had affirmatively blocked or that the jurisdiction had deferred while waiting for the *Shelby County* decision. These states' instantaneous reaction to the Court's decision does not portend well for the future.

As the minority language population continues to grow and move in larger numbers to more states and localities, violations of Section 203 and the other language-related protections—sometimes in combination with intimidation or harassment—are occurring in new areas of the country. Indigenous peoples also continue to suffer recent and severe discrimination in voting.

Perhaps the most disturbing emerging trend involves the spike in activities described in Chapter 6: laws and practices—like government-issued photo identification requirements for voters—which effectively disenfranchise racial minorities in greater number, and the laws that reduce the availability of methods of voting—like early voting—that minority voters use more than white voters. It is difficult not to view these voting changes with a jaundiced eye, given the practical impediments they create and the minimal, if any, measurable legitimate benefit they offer. The "omnibus" voting legislation passed in North Carolina is perhaps the best example of how this emerging trend and the *Shelby County* decision have coalesced: after *Shelby County*, the North Carolina legislature quickly enacted a law that, among other things, contains a restrictive voter identification requirement, reduces the duration of early voting, and eliminates same-day voter registration during the early voting period.

In 1964, the Supreme Court stated in *Reynolds v. Sims* that because "the right to exercise the franchise in a free and unimpaired manner is preservative of other basic civil and political rights, any alleged infringement of the right of citizens to vote must be carefully and meticulously scrutinized." This principle of constitutional law should guide courts, policymakers, election administrators, and citizens every time they contemplate an election law or practice. All too often, however, this principle is ignored—to the detriment of minority voters. As long as this is the case, specific legal protections that deter and combat the broad range of methods of discriminating against minority voters, and the vigorous enforcement of these protections, remain vitally important to American democracy.

PHOTO CREDIT: JIMMY MCEACHERN

ENDNOTES

CHAPTER 1

1 *South Carolina v. Katzenbach,* 383 U.S. 301, 315–16

2 *See United States v. Cruikshank,* 92 U.S. 542 (1876); *United States v. Reese*, 92 U.S. 214 (1876).

3 *See* J. Morgan Kousser, *The Shaping of Southern Politics: Suffrage Restriction and the Establishment of the One-Party South, 1880-1910,* at 45–62 (1974).

4 Richard Wormser, *The Rise and Fall of Jim Crow* 165–82 (2003).

5 *See, e.g., Katzenbach*, 383 U.S. at 313.

6 U.S. Comm'n on Civil Rights, *The Voting Rights Act: Ten Years After* 43 (1975).

7 President Lyndon B. Johnson, Special Message to Congress: The American Promise (Mar. 15, 1965), *available at* http://www.lbjlib.utexas.edu/johnson/archives.hom/speeches.hom/650315.asp.

8 Voting Rights Act of 1965, Pub. L. 89-110, 79 Stat. 437.

9 *Id.* § 4 (codified as amended at 42 U.S.C. § 1973b).

10 42 U.S.C. § 1973b(c).

11 Voting Rights Act, § 6.

12 42 U.S.C. § 1973f.

13 *See* 42 U.S.C. § 1973c.

14 *See* Voting Rights Act, § 2 (codified as amended at 42 § 1973).

15 42 U.S.C. § 1973b(e).

16 42 U.S.C. § 1973i.

17 *South Carolina v. Katzenbach*, 383 U.S. 301, 308 (1966).

18 *Id.* at 328 (footnote omitted).

19 Voting Rights Act, § 4.

20 Voting Rights Act Amendments of 1970, Pub. L. No. 91-285, 84 Stat. 314; Voting Rights Amendments of 1975, Pub. L. No. 94-73, 89 Stat. 400; Voting Rights Act Amendments of 1982, Pub. L. No. 97-205, 96 Stat. 131; Fannie Lou Hamer, Rosa Parks, Coretta Scott King, Cesar Chavez, Barbara C. Jordan, William C. Valasquez, and Dr. Hector P. Garcia Voting Rights Act Reauthorization and Amendments Act of 2006, Pub. L. No. 109-246, 120 Stat. 577.

21 Voting Rights Act Amendments of 1970.

22 Voting Rights Amendments of 1975.

23 H.R. Rep. No. 109-478 (2006); H.R. Rep. No. 97-205 (1982); H.R. Rep. No. 94-196 (1975); H.R. Rep. No. 91-397 (1969).

24 H.R. Rep. No. 94-196.

25 *Id.*

26 *Id.*

27 *Voting Rights Amendments of 1975* § 203 (codified as amended at 42 U.S.C. § 1973aa–la).

28 *Id.*

29 *See Mobile v. Bolden*, 446 U.S. 55 (1980).

30 S. Rep. No. 97-417 (1982).

31 *Katzenbach v. Morgan*, 384 U.S. 641 (1966).

32 *Georgia v. United States*, 411 U.S. 526, 535 (1973).

33 *City of Rome v. United States*, 446 U.S. 156, 172–82 (1980).

34 *Lopez v. Monterey Cnty.,* 525 U.S. 266 (1999).

35 *Backgrounder: The Voting Rights Act*, VRA for Today, http://vrafortoday.org/?attachment_ id=212 (last visited July 16, 2014).

36 *See generally* Nat'l Comm'n on the Voting Rights Act, *Protecting Minority Voters: The Voting Rights Act at Work 1982-2005* (2006).

37 Press Release, Leadership Conference on Civil Rights, Civil Rights Coalition Celebrates Renewal of Landmark Voting Rights Act (July 27, 2006), *available at* http://www.civilrights. org/press/2006/civil-rights-coalition-celebrates-renewal-of-landmark-voting-rights-act.html.

38 *Reno v. Bossier Parish Sch. Bd.*, 520 U.S. 471 (1997).

39 *Georgia v. Ashcroft*, 539 U.S. 461 (2003).

40 H.R. Rep. No. 109-478, at 66-72.

41 *Id.* at 61-62.

42 *Section 2 of the Voting Rights Act*, U.S. Dep't of Justice, http://www.justice.gov/crt/about/ vot/sec_2/about_sec2.php (last visited July 16, 2014).

43 42 U.S.C. § 1973(b).

44 S. Rep. No. 97-417, 28-29 (1982).

45 *Thornburg v. Gingles*, 478 U.S. 30, 47 (1986). The potential Section 2 factors include:

> 1. the history of official voting-related discrimination in the state or political subdivision; 2. the extent to which voting in the elections of the state or political subdivision is racially polarized; 3. the extent to which the state of political subdivision has used voting practices or procedures that tend to enhance the opportunity for discrimination against the minority group, such as unusually large election districts, majority-vote requirements, and prohibitions against bullet voting; 4. the exclusion of members of the minority group from candidate slating processes; 5. the extent to which minority group members bear the effects of discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the political process; 6. the use of overt or subtle racial appeals in political campaigns; and 7. the extent to which members of the minority group have been elected to public office in the jurisdiction.

See id. at 36–37. Also potentially relevant is:

> whether there is a significant lack of responsiveness on the part of elected officials to the particularized needs of the members of the minority group [or] whether the policy underlying the state or political subdivision's use of such voting qualification, prerequisite to voting, or standard, practice or procedure is tenuous.

Id. at 37 (quoting S. Rep. 97-417, at 28-29).

46 *See* Nat'l Comm'n on the Voting Rights Act, *supra* note 36, at 88.

46a *Gingles*, 478 U.S. at 49-51.

47 *Id.* at 46.

48 Section 5 defines a voting change as any practice that differs either from the pre-existing practice or from the practice in effect on the date that the jurisdiction's coverage began. 42 U.S.C. § 1973c(a). Most of the Section 5 jurisdictions were covered for changes after November 1, 1964 based upon the original enactment of Section 5 in 1965; a few were covered for changes after November 1, 1968 based upon a 1970 amendment to Section 5; and others were covered after November 1, 1972 based upon the 1975 amendments to the statute. *Jurisdictions Previously Covered by Section 5*, U.S. Dep't Justice, http://www.justice.gov/crt/ about/vot/sec_5/covered.php.

49 *Allen v. State Board of Elections*, 393 US 544, 566 (1969).

50 *Clark v. Roemer*, 500 U.S. 646, 658 (1991).

51 Submissions to the Attorney General generally were required to be decided within 60 days or the submitted voting change automatically was precleared by operation of law. However, in certain circumstances the Attorney General was authorized to extend the review period, most particularly when needed to ensure that preclearance decisions regarding controversial changes were based on a complete factual record. *See* Procedures for Administration of Section 5 of the Voting Rights Act of 1965, As Amended, 28 C.F.R. § 51.10.

52 *See South Carolina v. Katzenbach,* 383 U.S. 301, 328 (1966); 28 C.F.R. § 51.52(a).

53 *See* 42 U.S.C. § 1973c(a).

54 *Beer v. United States*, 425 U.S. 130, 141 (1976).

55 *See* 42 U.S.C. § 1973b(c).

56 *Id.* § 1973b(f)(3).

57 *See Katzenbach*, 383 U.S. at 329–33.

58 42 U.S.C. § 1973b(a)(1)–(6).

59 *See Section 4 of the Voting Rights Act*, U.S. Dep't of Justice, http://www.justice.gov/crt/about/ vot/misc/sec_4.php#bailout (last visited July 24, 2014).

60 *Jurisdictions Previously Covered by Section 5*, *supra* note 48.

61 Voting Rights Act Amendments of 1975 (enacting 42 U.S.C. § 1973b(f)(4)).

62 *Id.* (enacting 42 U.S.C. § 1973 aa-1a).

63 28 C.F.R. § 55.8(a).

64 Voting Rights Act Amendments of 2006, Determinations Under Section 203, 76 Fed. Reg. 198 (Oct. 13, 2011).

65 42 U.S.C. § 1973b(f)(4); *id.* § 1973aa–1a(b)(3)(A).

66 Attorney General's Guidelines on Implementation of the Provisions of the Voting Rights Act Regarding Language Minority Groups, 76 Fed. Reg. 169 (Aug. 31, 2011) (codified at 28 C.F.R. pt. 55).

67 *Id.* § 55.2(b).

68 *Id.* § 55.16.

69 *Id.* § 55.17.

70 42 U.S.C. § 1973b(e).

71 42 U.S.C. § 1973a(a).

72 *Id.* § 1973a(c).

73 *Id.* § 1973aa.

74 *Id.* § 1973aa–6.

75 *Id.* § 1973i(a).

76 *Id.* § 1973i(b).

77 *See generally* Nat'l Comm'n on the Voting Rights Act, *supra* note 36, at 15-25 (discussing "The Two Problems Addressed by the Act[,]" disfranchisement and vote dilution).

78 *See Shelby County v. Holder*, 133 S. Ct. at 2633-35 (Ginsburg, J., dissenting).

79 *Bolden v. Mobile*, 542 F. Supp. 1050, 1075 (S.D. Ala. 1982).

80 *Gomillion v. Lightfoot*, 364 U.S. 339 (1960).

81 *Dillard v. Crenshaw Cnty*, 640 F. Supp. 1347, 1357 (M.D. Ala. 1986).

82 This transformation of American politics has been documented in numerous reports, books, and articles. *See, e.g., Quiet Revolution in the South* (Chandler Davidson & Bernard Grofman eds., 1994); Nat'l Comm'n on the Voting Rights Act, *supra* note 36; U.S. Comm'n on Civil Rights, *supra* note 6; U.S. Comm'n on Civil Rights, *The Voting Rights Act: Unfulfilled Goals* (1981).

83 U.S. Comm'n on Civil Rights, *supra* note 6, at 43.

84 H.R. Rep. No. 109-478, at 12–17, 25–28.

85 *Id.* at 29-31.

86 *Voting Determination Letters for Mississippi,* U.S. Dep't of Justice, http://www.justice.gov/crt/ records/vot/obj_letters/state_letters.php?state=ms (referencing determination letters issued May 21, 1969 and May 26, 1969).

87 *Voting Determination Letters for Georgia,* U.S. Dep't of Justice, http://www.justice.gov/crt/ records/vot/obj_letters/state_letters.php?state=ga (referencing determination letters issued June 19, 1968 and July 11, 1968). *Voting Determination Letters for South Carolina*, U.S. Dep't of Justice, http://www.justice.gov/ crt/records/vot/obj_letters/state_letters.php?state=sc.

88 *Voting Determination Letters for South Carolina,* U.S. Dep't of Justice, http://www.justice.gov/ crt/records/vot/obj_letters/state_letters.php?state=sc (referencing determination letter issued March 6, 1972).

89 H.R. Rep. No. 94-196, at 10.

90 *Section 5 Objection Letters,* U.S. Dep't of Justice, http://www.justice.gov/crt/records/vot/ obj_letters/index.php.

91 See Mark A. Posner, *The Real Story Behind the Justice Department's Implementation of Section 5 of the VRA: Vigorous Enforcement, as Intended by Congress,* 1 Duke J. Const. L. & Pub. Pol'y 79, 104-05 (2006).

92 S. Rep. No. 97-417, at 9–11.

93 S. Rep. No. 97-417, at 9–11.

94 *White v. Regester,* 412 U.S. 755 (1973).

95 S. Rep. No. 97-417, at 24-27 (discussing *Mobile v. Bolden*, 446 U.S. 55 (1980)).

96 *Quiet Revolution in the South, supra* note 82, at 35–36 (overview), 54–56, 61–64 (Alabama), 78, 99–100 (Georgia), 112–13, 120–21, 133 (Louisiana), 142–43, 151–52 (Mississippi), 171–73, 189 (North Carolina), 226–27, (South Carolina), 254–55, 264–68 (Texas), 297 (Virginia); Nat'l Comm'n on the Voting Rights Act, *supra* note 36, at 81–88.

97 *Garza v. County of L.A.,* 918 F. 2d 763 (9th Cir. 1990

98 Mark Rosenbaum, Op-Ed, *Drawing Fair District Lines,* L.A. Times, (Sept. 27, 2011), http://articles.latimes.com/2011/sep/27/opinion/la-oe-rosenbaum-county-supervisors-redistricting-20110927.

99 *Reno v. Bossier Parish School Bd.*, 520 U.S. 471 (1997).

100 *Reno v. Bossier Parish School Bd. (Bossier Parish II),* 528 U.S. 320 (2000).

101 *Id.* at 342-53 (Souter, J., dissenting).

102 Mark A. Posner, *Time is Still on Its Side: Why Congressional Reauthorization of Section 5 of the Voting Rights Act Represents a Congruent and Proportional Response to Our Nation's History of Discrimination in Voting,* 10 N.Y.U. J. Legis. & Pub. Pol'y 51, 114 (2006); Peyton McCrary et al., *The End of Preclearance As We Knew It: How the Supreme Court*

Transformed Section 5 of the Voting Rights Act, 11 Mich. J. Race & L. 275, 276, 284–86, 297 (2006). In *Busbee v. Smith*, 549 F. Supp. 494 (D.D.C 1982), the district court denied preclearance to a Georgia congressional redistricting plan that was not retrogressive but which was adopted specifically to minimize the opportunity of African Americans to elect any members of the State's congressional delegation. The plan was adopted pursuant to the leadership of a redistricting committee chair who openly avowed a racial intent. The district court's decision was summarily affirmed by the Supreme Court. *Busbee v. Smith*, 459 U.S. 1166 (1983).

103 *See Pleasant Grove v. United States,* 479 U.S. 462, n.11 (1987); *City of Richmond v. United States,* 422 U.S. 358, 378–79 (1975).

104 *Georgia v. Ashcroft,* 539 U.S. 461, 482 (2003).

105 H.R. Rep. No. 109-478, at 68–72.

106 H.R. Rep. No. 109-478, at 68, 71.

107 *Shelby Cnty. v. Holder*, 811 F. Supp. 2d 424 (2011).

108 *Shelby Cnty. v. Holder,* 679 F. 3d 848 (2012).

109 *Shelby Cnty. v. Holder,* 133 S. Ct. 2612 (2013).

110 *Id.* at 2627.

111 *Id.* at 2619.

112 *Id.* at 2632–52.

113 *Id.* at 2632–33 (footnote omitted).

114 *Id.* at 2650

CHAPTER 2

1 Cases brought under Section 2 of the VRA that raised successful claims based upon the failure to provide language assistance are included in the separate category of language assistance cases, along with cases brought under Sections 203, 4(f)(4), and 4(e) of the VRA.

2 The Section 2 and language assistance cases include those in which a court ruled for the plaintiffs, and those in which the parties entered into a consent decree or settlement requiring that the challenged election practice be replaced or altered (including decrees and settlements in which the defendants admitted a violation (or the equivalent) and those in which no violation was admitted). The language cases include a few matters where out-of-court settlements were reached without litigation being filed.

3 Had the passage of time purged the vestiges of historic voting discrimination (*i.e.* conditions as they existed *circa* 1965-75), then the cases should show no geographic clustering.

4 As indicated in note 2, in identifying successful Section 2 lawsuits we include adjudicated court findings of Section 2 violations as well as settlements of Section 2 claims for which there was no court finding. This is because it would seriously understate the scope of the problem to rely exclusively upon adjudicated violations. In the first place, it would be incorrect to assume that the strongest Section 2 cases were those that were finally adjudicated. Indeed, strong Section 2 cases are very likely to settle. Voting rights cases are widely known for being "fact-heavy", and it is the policy of the Federal Rules of Civil Procedure and the federal courts to encourage settlements and to conduct trials only when necessary to resolve genuine factual disputes. Cases are routinely weeded out via dispositive motions when courts conclude that they do not present triable factual claims. While defendants frequently deny liability in settlement agreements, the fact that a settlement has altered the status quo in the plaintiffs' favor weighs strongly in favor of including them for purposes of assessing the extent of voting discrimination and the impact of the Voting Rights Act. Plaintiffs carry the burden of proof under Section 2, and a settlement is a reasonable indication that the defendants made a considered judgment that they stood a substantial risk that trial would result in a finding of liability against them.

5 At the time of the 2000 Census, nine states were fully covered under Section 4(b), and seven states were covered in part, leaving 34 states and the District of Columbia entirely uncovered. When Shelby County was decided, there was one fewer partially-covered state, since the covered townships in New Hampshire had bailed out of coverage.

6 *See Voting Rights Act: Evidence of Continuing Need: Hearing Before the Subcomm. on the Constitution of the H. Comm. on the Judiciary*, 109th Cong. 202-03 (2006) (Findings of the Michigan Voting Rights Initiative).

7 *League of United Latin American Citizens v. Perry*, 548 U.S. 399 (2006).

8 *Id.* at 440.

9 *White v. Regester*, 412 U.S. 755 (1973), the first case in which the Supreme Court upheld a claim of minority vote dilution, involved a Texas state legislative redistricting plan.

10 *Texas v. United States*, 887 F. Supp. 2d 133, 153, 159 (D.D.C. 2012) *vacated and remanded*, 133 S.Ct. 2885 (2013).

11 Cal. Elec. Code. §§ 14027-14032.

12 The constitutionality of the CVRA was unsuccessfully challenged in *Sanchez v. City of Modesto*, 145 Cal. App. 4th 660 (2007). *See also generally* National Commission on Voting Rights, California State Hearing (Jan. 30, 2014) (transcript on file with the Lawyers' Committee) (discussing examples of successful litigation under the CVRA).

13 *See* Table 3, note b for an explanation as to six objections that are omitted from this objection count.

14 Two of the preclearance denials by the D.C. district court were preceded by administrative preclearance denials by DOJ regarding the same voting changes. Since the district court rulings superseded the DOJ determinations, these two administrative denials are not included in the total number of objection letters issued by DOJ.

15 This Report does not include Section 5 enforcement actions since 1995. Such cases concerned the limited (but important) question of whether voting changes were being implemented by a covered jurisdiction without the requisite preclearance. These cases can provide indirect evidence of efforts to implement discriminatory voting changes, but because they did not deal with the substantive question of whether the voting practices at issue were discriminatory or not, they are not included here.

16 28 C.F.R. § 51.52.

17 By contrast, Section 2 and Section 5 of the VRA do not require states to follow any specific procedures. Instead, they prohibit the use of voting practices and procedures that are shown to be racially discriminatory (under Section 2) or that jurisdictions could not show to be nondiscriminatory (under Section 5).

18 *See* Attorney General's Guidelines on Implementation of the Provisions of the Voting Rights Act Regarding Language Minority Groups, 28 C.F.R. § 55 (2011), *available at* http://www.justice.gov/crt/about/vot/28cfr/55/28cfr55_2011.pdf; *see also* Thomas E. Perez, Assistant Att'y Gen., Dep't of Justice, Assistant Attorney General Thomas E. Perez Speaks at the National Association of Secretaries of State 2012 Conference (Jan. 30, 2012), *available at* http://www.justice.gov/crt/opa/pr/speeches/2012/crt-speech-1201301.html.

19 28 C.F.R. § 55.17

20 42 U.S.C. § 1973aa–6 ("Any voter who requires assistance to vote by reason of blindness, disability, or inability to read or write may be given assistance by a person of the voter's choice, other than the voter's employer or agent of that employer or officer or agent of the voter's union.").

CHAPTER 3

1 *See* Mark A. Posner, *The Real Story Behind the Justice Department's Implementation of Section 5 of the VRA: Vigorous Enforcement, as Intended by Congress*, 1 Duke J. Const. L. & Pub. Pol'y 79, 102, 104–05 (2006).

2 *See id.*

3 *See id.; see generally Section 5 Objection Letters,* U.S. Dep't of Justice, http://www.justice.gov/crt/records/vot/obj_letters/index.php (last visited July 23, 2014), (listing determination letters issued by the Department of Justice by State). It was rare that a covered jurisdiction filed for preclearance with the U.S. District Court for the District of Columbia. From 1965 to 2006, that court denied preclearance in eleven cases. Posner, *supra* note 1, at 113–14. After the 2006 reauthorization, the district court denied preclearance in four additional cases: *Florida v. United States*, 887 F. Supp. 2d 133 (D.D.C. 2012); *Texas v. Holder,* 888 F. Supp. 2d 113 (D.D.C. 2012), vacated and remanded, 133 S. Ct. 2886 (2013); *Texas v. United States,* 887 F. Supp. 2d 133 (D.D.C. 2013), *vacated and remanded*, 133 S. Ct. 2885 (2013); and *South Carolina v. United States,* 898 F. Supp. 2d 30 (D.D.C. 2012).

4 Determination Letter from J. Stanley Pottinger, Assistant Att'y Gen., U.S. Dep't of Justice, to State of Texas (Dec. 10, 1975), *available at* http://www.justice.gov/crt/records/vot/obj_letters/letters/TX/TX-1000.pdf; Determination Letter from J. Stanley Pottinger, Assistant Att'y Gen., U.S. Dep't of Justice, to State of Texas (Jan. 3, 1976), *available at* http://www.justice.gov/crt/records/vot/obj_letters/letters/TX/TX-1010.pdf.

5 *Texas v. Holder*, 888 F. Supp. 2d at 115.

6 *Texas v. United States,* 887 F. Supp. 2d at 138, 159, 161, 162, 177-78.

7 *See Voting Determination Letters for Texas,* U.S. Dep't of Justice, http://www.justice.gov/crt/records/vot/obj_letters/state_letters.php?state=tx (last visited July 23, 2014), (listing determination letters issued by the Department of Justice pertaining to the State of Texas).

8 *South Carolina v. United States*, 898 F. Supp. 2d at 32.

9 Determination Letter from Thomas E. Perez, Assistant Att'y Gen., U.S. Dep't of Justice, to State of South Carolina, 1–3, (Dec. 23, 2011), *available at* http://www.justice.gov/crt/records/vot/obj_letters/letters/SC/l_111223.pdf.

10 See 898 F. Supp. 2d at 40 ("About 96% of whites and about 92–94% of African–Americans currently have one of the . . . photo IDs [listed by the 2011 statute]. That racial disparity, combined with the burdens of time and cost of transportation inherent in obtaining a new photo ID card, might have posed a problem for South Carolina's law under the strict effects test of Section 5 of the Voting Rights Act. . . . .").

11 *Id.* at 36.

12 *Id.*

13 *Id.*

14 *Id.* at 48.

15 *Id.* at 48–50.

16 *Id.* at 53–54.

17 Determination Letter from Thomas E. Perez, Assistant Att'y Gen., U.S. Dep't of Justice, to State of Georgia (Dec. 21, 2012), *available at* http://www.justice.gov/crt/records/vot/obj_letters/letters/GA/l_121221.pdf.

17a *Id.*

18 *Id.* at 3.

18a Complaint at 5–6, *Howard v. Augusta-Richmond Cnty.,* No. 1:14-cv-00097 (S.D. Ga. May 13, 2014), *available at* http://redistricting.lls.edu/files/GA%20howard%2020140414%20complaint.pdf.

19 Order Granting Motion to Dismiss at 8, *Howard v. Augusta-Richmond Cnty.,* No. 1:14-cv-00097 (S.D. Ga. May 13, 2014), *available at* http://redistricting.lls.edu/files/GA%20howard%2020140513%20order.pdf.

20 Sandy Hodson, *City Wins Lawsuit over Change in Election Date for Local Offices,* Augusta Chron. (May 13, 2014), http://chronicle.augusta.com/news/government/elections/2014-05-13/city-wins-lawsuit-over-change-election-date-local-offices.

21 Determination Letter from Thomas E. Perez, Assistant Att'y Gen., U.S. Dep't of Justice, to Beaumont Indep. Sch. Dist. (Dec. 21, 2012), *available at* http://www.justice.gov/crt/records/vot/obj_letters/letters/TX/l_121221.pdf.

21a *Id.* at 1–3.

22 *Id.* at 2.

23 *See* Complaint, *Walker v. Beaumont Indep. Sch. Dist.,* No. 1:13-cv-128 (E.D. Tex.), *available at* http://redistricting.lls.edu/files/20131223%20walker%20v%20bisd%20complaint.pdf.

24 H.R. Rep. No. 109-478 (2006), at 57.

25 *Shelby Cnty. v. Holder,* 679 F.3d 848, 872 (D.C. Cir. 2012).

26 *Id. (quoting Modern Enforcement of the Voting Rights Act: Hearing Before the S. Comm. on the Judiciary,* 109th Cong. 22 (2006)).

27 *See Winter v. Natural Res. Def. Council, Inc.,* 555 U.S. 7, 20 (2008); *see also id.* at 51 (Ginsburg, J., dissenting).

28 In sum, the preliminary injunction remedy is considered "extraordinary" and "drastic." 11A Wright, Miller, Kane, Marcus & Steinman, *Federal Practice & Procedure* § 2948 (3d ed.).
29 *United States v. Charleston Cnty.,* 316 F. Supp. 2d 268, 272 (D. S.C. 2003).
30 *Id.* at 272.
31 *Id.* at 273.
32 *Id.* at 307.
33 *United States v. Charleston Cnty.*, 365 F.3d 341 (4th Cir. 2004).
34 Determination Letter from Assistant Att'y Gen. R. Alexander Acosta, U.S. Dep't of Justice, to Charleston Cnty. Sch. Dist. (Feb. 26, 2004), *available at* http://www.justice.gov/crt/records/vot/obj_letters/letters/SC/SC-2180.pdf
35 N.C. Gen. Stat. §§ 163-227.2 (2013) (amended 2013).
36 N.C. Gen. Stat. § 163-82.6(a) (2013) (amended 2013).
37 N.C. Gen. Stat. § 163-82.1(d) (repealed by H.B. 589 (2013)).
38 *2012 Election Turnout Dips Below 2008 and 2004 Levels: Number Of Eligible Voters Increases By Eight Million, Five Million Fewer Votes Cast,* Bipartisan Policy Ctr. (Nov. 8, 2012), bipartisanpolicy.org/news/press-releases/2012/11/2012-election-turnout-dips-below-2008-and-2004-levels-number-eligible.
39 Press Release, Democracy N.C., Republicans, African Americans, Women and Seniors Post the Highest Voter Turnout Rates in North Carolina (Dec. 19, 2012), *available at* democracy-nc.org/downloads/NCVoterTurnout2012PR.pdf.
40 *Shelby Cnty. v. Holder,* 133 S. Ct. 2612 (2013). *Shelby County* effectively removed the preclearance provision of Section 5 of the Voting Rights Act, which had required covered jurisdictions to prove that proposed voting changes had neither a discriminatory purpose or a discriminatory retrogressive effect.
41 Expert Report of J. Morgan Kousser at 38, *League of Women Voters of N.C. v. North Carolina,* No. 1:13-cv-00660-TDS-JEP (M.D.N.C. May 19, 2014) (*quoting* Rob Christensen & John Frank, *Confident GOP Preps for Voter ID Bill - Democrats Say It's More the Same; Poll Shows Bill Has Support,* News & Observer, Mar. 6, 2013), *available at* http://moritzlaw.osu.edu/electionlaw/litigation/documents/League1557.pdf.
42 The bill allowed voters to use employee ID; ID issued by the University of North Carolina or its constituent institutions; ID issued by a North Carolina community college; ID issued to a fireman, EMS or hospital employee, or law enforcement officer; ID issued by a unit of local government, public authority, or special district; and ID issued for a government program of public assistance.
43 United States' Memorandum of Law in Support of its Motion for a Preliminary Injunction and for the Appointment of Federal Observers at 12, *League of Women Voters of N.C.,* No. 1:13-cv-00660-TDS-JEP (internal citation omitted).
44 *See* N.C. Sess. Laws 2013-381 (H.B. 589).
45 *Id.* at § 2.1.
46 United States' Memorandum of Law in Support of its Motion for a Preliminary Injunction and for the Appointment of Federal Observers, *supra* note 43, (internal citation omitted).
47 Aaron Blake, *North Carolina Governor Signs Extensive Voter ID Law*, Wash. Post (Aug. 12, 2013), www.washingtonpost.com/blogs/post-politics/wp/2013/08/12/north-carolina-governor-signs-extensive-voter-id-law; *cf.* N.C. Sess. Laws 2013-381 (H.B. 589).

CHAPTER 4

1 This report uses the terms "African American" and "black" interchangeably. In addition, the report uses the terms as "Latino" and "Hispanic" interchangeably. "Native Americans" include American Indians and Alaska Natives.
2 Whereas this report refers to Latinos, the statute refers to "persons . . . of Spanish heritage." Voting Rights Act Amendments of 1975, Pub. L. No. 94-73, § 203, 89 Stat. 400, 401–02.
3 Nat'l Comm'n on the Voting Rights Act, *Protecting Minority Voters: The Voting Rights Act at Work*, 1982–2005 (2006).
4 *Id.* at 15.
5 Jon Greenbaum et al., Shelby County v. Holder: *When the Rational Becomes Irrational*, 57 How. L.J. 811, 816 (citing Alexander Keyssar, *The Right to Vote: The Contested History of Democracy in the United States* (2000)); J. Morgan Kousser, *The Shaping of Southern Politics: Suffrage Restriction and the Establishment of the One-Part South, 1880-1910* (1974); *see also* Ellen Katz et al., *Documenting Discrimination in Voting: Judicial Findings Under Section 2 of the Voting Rights Act Since 1982*, 39 U. Mich. J.L. Reform 643, 646 (2006).
6 Keyssar, *supra* note 5, at 111.
7 Joel Heller, Shelby County *and the End of History*, 44 U. Mem. L. Rev. 357, 367 (2013).
8 Keyssar, *supra* note 5, at 114–15. Additionally, in Georgia by 1910, only 4% of all black males were registered to vote. *Id.* at 114–15. In 1964, only 6.7% of African Americans eligible to vote in Mississippi were registered compared to 70.2% of whites. *Extension of the Voting Rights Act: Hearings Before the Subcomm. on Civil & Constitutional Rights of the H. Comm. on the Judiciary,* 94th Cong. 4 (1975) [hereinafter House VRA Hearings of 1975] (statement of Hon. Peter W. Rodino, Jr.). Just prior to the enactment of the VRA in March of 1965, "registration statistics in Alabama, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, and Virginia were 19.3, 27.4, 31.6, 6.7, 46.8, 37.3, and 38.3 percent, respectively." H.R. Rep. No. 109-478, at 7 n.8 (2006) (citing H.R. Rep. No. 94-196, at 6 (1975)).
9 Katz et al., *supra* note 5, at 646.
10 Heller, *supra* note 7, at 367 n.51.
11 House VRA Hearings of 1975, *supra* note 8, at app. 1023. The disparity between black and white registration rates in the covered states was approximately 44.1 percent prior to the Act (in March 1965). *Id.* at app. 1026. This disparity was approximately 27.4 percent in September 1967 and 11.2 percent for 1971–1972. *Id.* The 1975 legislative history also highlights the overall increase in turnout from pre-VRA to post-VRA elections. As compared to the 1964 presidential election, turnout in the 1968 presidential election increased

in all seven covered states. *Id.* at app. 1029. "The increase ranged from 0.1 percentage point in Georgia to 19.3 percentage points in Mississippi." *Id.* at app. 1029; *see also id.* at app. 1028 tbl. 4 (depicting "Voter Turnout in the Presidential Elections of 1964, 1968, and 1972 in Southern States Covered by the Voting Rights Act"). National turnout dropped for the 1972 election but remained above the 1964 rates in four of the seven covered states. *Id.* at app. 1029. The record notes that "[w]here persons vote in States with traditionally low turnout, despite a strong national trend toward nonvoting, it seems likely that many of the voters are persons who had previously been denied the opportunity to vote." *Id.* Further, this conclusion is supported by survey data that Congress relied upon in 1975, which indicated that participation rates among Southern blacks "increased sharply" from 1964 to 1968. *Id.* at app. 1031. Though it declined slightly between 1968 and 1972, the 1972 rates remained higher than 1964 rates. *Id.*

12 *Id.* at 20 (statement of Hon. Arthur S. Fleming, Chairman, U.S. Comm'n on Civil Rights). Additionally, the U.S. Census found that the voter turnout rate of African Americans and other nonwhites in the South rose from 44 to 51 percent between the 1964 and 1968 elections despite an overall decline in voting turnout nationally in that year. U.S. Census Bureau, *Current Population Reports: Voting and Registration in the Election of November 1968* 1 (1969).

13 *1975 House VRA Hearings*, *supra* note 8, at 31.

14 U.S. Comm'n on Civil Rights, *Political Participation* 12 (1968).

15 *Id.* at 21.

16 *Allen v. State Bd. of Elections*, 393 U.S. 544 (1969).

17 *Quiet Revolution in the South: The Impact of the Voting Rights Act 1965-1990* 33 (Chandler Davidson & Bernard Grofman eds., 1994).

18 *Id.*

19 *Id.* at 384.

20 *See*, *e.g.*, Katz, *supra* note 5, at 656 ("Courts identified violations of Section 2 more frequently between 1982 and 1992 than in the years since. Of the 92 total violations identified, courts found 46.7% of them during the 1980s."); *see also* Nat'l Comm'n on the Voting Rights Act, *supra* note 3, at 81–83.

21 *Quiet Revolution in the South*, *supra* note 17, at 385.

22 *Id.*

23 *See* Debo P. Adegbile, *Voting Rights in Louisiana: 1982-2006*, 17 S. Cal. Rev. L. & Soc. Just. 413, 429 (2008) ("In fact, [the governor] 'publicly expressed his opposition to the concept of a majority black district, stating that districting schemes motivated by racial considerations, however benign, smacked of racism, and in any case were not constitutionally required.'").

24 *See id.* at 429–30 (citing *Major v. Treen*, 574 F. Supp. 325, 355–56 (E.D. La. 1983)).

25 Though the rates of African American voter registration, turnout, and elected officials had increased, there were more Section 5 objections "lodged between 1982 and 2004 than were interposed between 1965 and 1982 and . . . such objections did not encompass minor inadvertent changes[,]" nor does this account for the number of withdrawals. H.R. Rep. No. 109-478, *supra* note 8, at 21 (citing Nat'l Comm'n on the Voting Rights Act, *supra* note 3, at 54).

26 H.R. Rep. No. 109-478, *supra* note 8, at 21.

27 *Voting Determination Letters for Mississippi*, U.S. Dep't of Justice, http://www.justice.gov/crt/records/vot/obj_letters/state_letters.php?state=ms (last visited July 23, 2014).

28 Katz et al., *supra* note 5, at 646; *see also* H.R. Rep. No. 109-478, *supra* note 8, at 21.

29 H.R. Rep. No. 109-478, *supra* note 8, at 23.

30 *Id.* at 21.

31 *Dillard v. Crenshaw*, 640 F. Supp. 1347 (M.D. Ala. 1986).

32 *Id.* at 1356–57.

33 *Quiet Revolution in the South*, *supra* note 17, at 53–54.

34 *Dillard*, 640 F. Supp. at 1373.

35 James Blacksher et al., *Voting Rights in Alabama 1982–2006* 9 (2006), *available at* http://www.protectcivilrights.org/pdf/voting/AlabamaVRA.pdf.

36 *Harris v. Graddick*, 593 F. Supp. 128, 130 (M.D. Ala. 1984).

37 *Harris v. Siegelman*, 695 F. Supp 517, 526 (M.D. Ala. 1988).

38 Press Release, U.S. Census Bureau, 2010 Census Shows Black Population has Highest Concentration in the South (Sept. 29, 2011), *available at* http://www.census.gov/news-room/releases/archives/2010_census/cb11-cn185.html.

39 *See Historical Time Series Tables*, U.S. Census Bureau, https://www.census.gov/hhes/www/socdemo/voting/publications/historical/ (last visited July 23, 2014) (download Table A-1. Reported Voting and Registration by Race, Hispanic Origin, Sex, and Age Groups: November 1964 to 2012).

40 *See id.*

41 Nat'l Comm'n on the Voting Rights Act, *supra* note 3, at 11–25.

42 *Id.* at 37.

43 David Lublin et al., *Has the Voting Rights Act Outlived its Usefulness? In a Word, "No"*, 34 Legis. Studies Q. 525, 526 (2009). It may be the case that coalition districts, or districts in which "more than one protected minority group combined forms a majority in a district," have been particularly successful in electing African American candidates. Matt Barreto et al., *Redistricting: Coalition Districts and the Voting Rights Act* 1 (2011), *available at* https://www.law.berkeley.edu/files/Coalition.pdf (discussing voting patterns among Black and Latino voters in Los Angeles County in the 2010 election of Kamala Harris as California Attorney General).

44 Throughout this chapter, references to "Section 2 cases" refer only to those cases not involving bilingual assistance.

45 *See* Supplemental Online Appendix, *available at* http://votingrightstoday.org/discriminationreport

46 *See id.*

47 *See id.*

48 *See id.*

49 *See infra* Chapter 6.

50 Paul Taylor et al., Pew Research Ctr., *An Awakened Giant: The Hispanic Electorate Is Likely to Double by 2030* 5 (2012), *available at* http://www.pewhispanic.org/files/2012/11/hispanic_vote_likely_to_double_by_2030_11-14-12.pdf.

51 Mark Hugo Lopez et al., Pew Research Ctr., *Diverse Origins: The Nation's 14 Largest Hispanic-Origin Groups* 5 (2013), *available at* http://www.pewhispanic.org/files/2013/06/summary_report_final.pdf.

52 NALEO Educ. Fund, *Latino Voters at Risk: The Impact of Restrictive Voting and Registration Measures on the Nation's Fastest Growing Electorate* (2012), *available at* http://www.naleo.org/downloads/LatinoVotersatRisk.pdf.

53 The Latino community in the United States, although often referred to as a cohesive ethnic group, is in fact comprised of groups that are quite diverse in important aspects, including race and country of origin, tracing their family heritage to "more than 20 Spanish-speaking nations worldwide." Lopez et al., *supra* note 51, at 3.

54 Mexican Americans and Puerto Ricans comprise 64.6 % and 9.5% of all Latinos in the U.S., respectively. *Id.*

55 In 1836, Anglo-Americans took control of the Texas government, then part of Mexico, and eventually Texas was annexed to the U.S. in 1845. Expert Report of Dr. Andres Tijerina at 2–3, *Texas v. United States*, 2011 WL 6476787 (D.D.C. Aug. 8, 2011); Juan F. Perea, *A Brief History of Race and the U.S.-Mexican Border: Tracing the Trajectories of Conquest,* 51 UCLA L. Rev. 283, 284–85 (2003). Shortly after, the Treaty of Guadalupe Hidalgo in 1848 which ended the Mexican–American War, ceded to the United States a great portion of land that belonged to Mexico, including California, present-day Arizona and New Mexico and parts of Utah, Nevada, and Colorado. *Id.*

56 Later, the Foraker Act of 1900 established a civilian government in Puerto Rico consisting in part of a governor and supreme court appointed by the President of the United States. César A. López Morales, Note, *A Political Solution to Puerto Rico's Disenfranchisement: Reconsidering Congress's Role in Bringing Equality to America's Long-Forgotten Citizens,* 32 B.U. Int'l L.J. 185, 192–93 (2014). Congress authorized Puerto Ricans to elect their own governor and draft their own constitution in 1947 and 1950; in 1952, Congress approved a constitution providing for the establishment of the Commonwealth of Puerto Rico. *Id.* at 195. Importantly, because state electors have exclusive authority to elect the President, the 3.7 million U.S. citizens of Puerto Rico who reside on the island are unable to participate in the election of the President and Vice-President. *Id.* at 187–88

57 Katherine Culliton-González, *Time to Revive Puerto Rican Voting Rights*, 19 Berkeley La Raza L.J. 27, 29–31 (2008). This migration accelerated after World War II, when Puerto Ricans were recruited to work in East Coast factories and to support seasonal farm labor. New York has been and continues to be the most popular point of entry, but large concentrations of Puerto Ricans are also located in Chicago and Philadelphia. *Id.* at 43.

58 During the Great Depression, Mexican Americans were targeted through what came to be known as the Mexican "repatriation." As unemployment rose, so did the level of hostility toward Mexican Americans and possibly 400,000 people, many of whom were U.S. citizens, were forced out of the country. Wendy Koch, *U.S. Urged to Apologize for 1930s Deportations*, USA Today (Apr. 5, 2006), http://www.usatoday.com/news/nation/2006-04-04-1930s-deportees-cover_x.htm. Although not at a massive scale, incidents of unlawful deportation of U.S. citizens of Mexican ancestry have continued to take place. In 2007, for example, Peter Guzman, a U.S. citizen was deported to Tijuana with $3 in his pocket. He had not visited Tijuana in more than a decade and knew no one there. He survived by begging and eating from garbage cans. A lawsuit was filed by the ACLU in 2008. *Family of U.S. Citizen Illegally Deported to Mexico Says Government Endangered His Life*, Am. Civil Liberties Union (Feb. 27, 2008), https://www.aclusocal.org/family-of-u-s-citizen-illegally-deported-to-mexico-says-government-endangered-his-life/.

59 For example, Mexican-Americans in South Texas were the victims of government-sponsored vigilante raids to drive them away from land grants. In 1874, in a raid aimed at taking land south of Corpus Christi, every adult, male Mexican American in a community of 500 was murdered by white vigilantes whose leaders were deputized in Brownsville. *See* Juan Cartagena, *Latinos and Section 5 of The Voting Rights Act: Beyond Black and White*, 18 Nat'l Black L.J. 201, 212 n.69 (2004) (citing Expert Report of Dr. Andres Tijerina, *Balderas v. Texas*, No. 6:01CV158 (E.D. Tex. Nov. 28, 2001)). Another example of violence toward Mexican Americans were the Los Angeles "Zoot Suit" riots during World War II, during which "over a period of days, Anglo servicemen beat Mexican Americans on the city streets while police watched…and, if arresting anyone, only arresting the victims." Kevin R. Johnson, Hernandez v. Texas: *Legacies of Justice and Injustice*, 25 Chicano-Latino L. Rev. 153, 165 (2005). Racial strife and hate crimes against Mexican Americans have not been completely eradicated. According to a leading Latino organization, hate crimes against Latinos have risen by 40%. *Hate Crimes*, Mexican Am. Legal Def. & Educ. Fund, http://www.maldef.org/immigration/public_policy/hate_crimes/ (last visited July 23, 2012).

60 *See Mendez v. Westminster*, 64 F. Supp. 544 (S.D. Cal. 1946), *aff'd*, 161 F.2d 774 (9th Cir. 1947) (en banc) (holding that the segregation of Latinos in public schools is unlawful).

61 *See Hernandez v. Texas*, 347 U.S. 475, 482 (1954) (holding that the dearth of persons of Mexican or Latin American descent serving on juries in the previous 25 years "bespeaks discrimination," in violation of the Fourteenth Amendment). In 1977, the Supreme Court also held that a Texas county's system for impaneling grand juries was unconstitutional. *Castaneda v. Partida*, 430 U.S. 482, 501 (1977). Mexican Americans made up approximately 80% of the county but from 1962 to 1972 they made up less than 40% of the grand jurors. *Id.* at 486–87 & n.7. Similarly, between 1959 and 1969, "Mexicans were under-represented on Los Angeles grand juries by a ratio of 8 to 1." Johnson, *supra* note 59, at 185 (quoting Ian F. Haney Lopez, *Racism on Trial: The Chicano Fight for Justice* (2003)) (internal quotation marks omitted).

62 Ian Haney Lopez, *Race and Colorblindness After* Hernandez *and* Brown, 25 Chicano-Latino L. Rev. 61, 62 (2005).

63 *Hernandez*, 347 U.S. at 482.

64 *Id.* at 479–80.

65 Cartagena, *supra* note 59, at 212. In 1918, Texas Governor, William Hobby established an additional force of 1000 men to supplement the work of the Texas Rangers. Private citizens also attempted to block the Mexican vote. In 1928 in Welasco, Texas, a group of Anglo Texans headed to the polls with shotguns and yelling "Don't let those Mexicans in to vote." *Id.* (citing Expert Report of Dr. Andres Tijerina, *supra* note 59, at 4, 8).

66 Cartagena, *supra* note 59, at 213.

67 California adopted its English literacy test in 1894 and it was not invalidated until 1970 by the California Supreme Court. *See Castro v. California*, 466 P.2d 244, 256 (1970). Arizona passed its literacy test in 1912 "in an acknowledged attempt to deter the 'ignorant Mexican vote.'" NALEO Educ. Fund, *supra* note 52, at 6.

68 NALEO Educ. Fund, *supra* note 52, at 6.

69 Culliton-González, *supra* note 57, at 29–31. The literacy test was used for voters who could not present a certificate demonstrating that they were educated in English up to the eighth grade. Even though English was the official language of schools in Puerto Rico until 1946, inspectors often denied certificates from Puerto Rican schools. Rodolfo O. de la Garza & Louis DeSipio, *Save the Baby, Change the Bathwater, and Scrub the Tub: Latino Electoral Participation After Seventeen Years of Voting Rights Act Coverage*, 71 Tex. L. Rev. 1479, 1493 (1993).

70 NALEO Educ. Fund, *supra* note 52, at 6.

71 *Id.*

72 42 U.S.C. § 1973b(e).

73 Testimony during the legislative process estimated that in New York, approximately 330,000 Puerto Ricans had been prevented from registering as a result of the literacy test. The literacy tests were not only discriminatory on their face, but also in application: "literacy test certificates would 'suddenly disappear' causing delays of hours, if not the entire day, to replace them, or how basic supplies like pencils would be missing whenever Puerto Ricans sought to take the test." Cartagena, *supra* note 59, at 206.

74 *Katzenbach v. Morgan*, 384 U.S. 641, 646 (1966).

75 *See* Brief of National Latino Organizations as Amici Curiae in Support of Respondents at 11–12, *Shelby Cnty., Ala. v. Holder*, 133 S. Ct. 2612 (2013); de la Garza & DeSipio, *supra* note 69, at 1492.

76 de la Garza & Desipio, *supra* note 69, at 1492.

77 Voting Rights Act Amendments of 1975, Pub. L. No. 94-73, § 203, 89 Stat. 400, 401–02. *See also* de la Garza & DeSipio, *supra* note 69, at 1481–82.

78 Cartagena, *supra* note 59, at 212. The 1975 Amendments extended preclearance and federal observer protections to any jurisdiction in which more than 5 percent of voting age citizens were of a single language minority, election materials had been prepared only in English in the 1972 presidential election, and less than 50 percent of voting age citizens had registered for or voted in the 1972 presidential election. Voting Rights Act Amendments of 1975 § 203; *see also* de la Garza & DeSipio, *supra* note 69, at 1481–82. Bilingual election materials were mandated in jurisdictions where a single language minority constituted more than 5 percent of the voting age population and the illiteracy rate among the language minority was higher than the national English illiteracy rate, and the use of literacy tests in voter registration were permanently banned. *See* Voting Rights Act Amendments of 1975 § 203.

79 42 U.S.C. §§ 1973b(f)(1)–(2).

79a *White v. Regester*, 412 U.S. 755, 769 (1973).

80 *Id.* at 768 (first alteration in original).

81 *Garza v. Cnty. of Los Angeles*, 756 F. Supp. 1298, 1303–04 (C.D. Cal. 1990), *aff'd*, 918 F.2d 763 (9th Cir. 1990), *cert. denied*, 498 U.S. 1028 (1991).

82 *Id.* at 1351.

83 Anna Brown & Mark Hugo Lopez, Pew Research Ctr., *Mapping the Latino Population, By State, County and City* 4 (2013), *available at* http://www.pewhispanic.org/2013/08/29/mapping-the-latino-population-by-state-county-and-city/; *see generally id.* (providing a complete breakdown and maps of the Latino population growth by state, county and metropolitan area).

84 Benjamin Highton & Arthur L. Burris, *New Perspectives on Latino Voter Turnout in the United States*, 30 Am. Pol. Res. 285, 300 (2002).

85 *Current Population Survey*, U.S. Census Bureau (Nov. 2012).

86 *See generally* Highton & Burris, *supra* note 84.

87 *Id.* at 294–95.

88 *Id.* at 295.

89 *Id.* at 295.

90 de la Garza & DeSipio, *supra* note 69, at 1509–10.

91 Highton & Burris, *supra* note 84, at 294.

92 Nina Perales et al., *Voting Rights in Texas: 1982-2006*, 17 S. Cal. Rev. L. & Soc. Just. 713, 726 (2008).

93 S. Rep. No. 97-417, at 28–29 (1982).

94 *Id.* at 29.

95 *Thornburg v. Gingles*, 478 U.S. 30, 69 (1986).

96 Katz et al., *supra* note 5, at app. For complete VRI Database Master List, visit http://www.sitemaker.umich.edu/votingrights/home, select "*Final Report*" and download "MasterList.xls."

97 NALEO Educ. Fund, *1996 National Directory of Latino Elected Officials* (on file with the Lawyers' Committee).

98 NALEO Educ. Fund, *2009 National Directory of Latino Elected Officials* (on file with the Lawyers' Committee); NALEO Educ. Fund, *2013 National Directory of Latino Elected Officials* (on file with the Lawyers' Committee).

99 Lublin et al., *supra* note 43, at 532.

100 *See, e.g.*, *League of United Latin American Citizens (LULAC) v. Perry*, 548 U.S. 399, 408, 423–43 (2006) (holding that changes to a Latino-majority district in west Texas violated Section 2); *Texas v. United States,* 887 F. Supp. 2d 133, 135 (D.D.C. 2012) (denying preclearance by unanimously concluding that the State of Texas engaged in intentional discrimination against African-American and Latino voters in enacting the 2011 State Senate and Congressional redistricting plans, and that the Congressional plan was retrogressive).

101 *See, e.g.*, *United States v. Osceola County, Fla.*, 475 F. Supp. 2d 1220, 1235 (M.D. Fla. 2006) (holding that the county's voting system diluted Hispanic votes in violation of Section 2).

102 *See* Supplemental Online Appendix*, supra* note 45.

103 *Sanchez v. Colorado*, 97 F.3d 1303 (1996).

104 *Id.* at 1307.

105 *Id.*

106 *Id.* at 1323.

107 *See id.* at 1308, 1319.

108 *Id.* at 1329.

109 *United States v. Long County*, No. 2:06-cv-00040 (S.D. Ga., Feb. 10, 2006).

110 *Id.*

111 Russ Bynum, *Georgia County Questions 95 Hispanics' Right to Vote*, Fla. Times-Union (Oct. 28, 2004), http://jacksonville.com/apnews/stories/102804/D860K2N01.shtml.

112 Brannon Stewart, *Challenge Dropped Against Most Atkinson Voters*, WALB News (Oct. 28, 2004).

113 Paul Taylor et al., *supra* note 50, at 6.

114 Am. Civil Liberties Union, *Voting Rights in Indian Country* 2 (Sept. 2009), *available at* https://www.aclu.org/files/pdfs/votingrights/indiancountryreport.pdf.

115 *Id.* at 16.

116 President Richard Nixon, Message to the Congress of the United States on the American Indians (July 8, 1970), *available at* http://www.presidency.ucsb.edu/ws/index.php?pid=2573&st=&st1=.
117 Am. Civil Liberties Union, *supra* note 114, at 5 (quoting *Draper v. United States*, 164 U.S. 240, 240, 246 (1896)).
118 Laughlin McDonald, *American Indians and the Fight for Equal Voting Rights* 5–7 (2010). Congress terminated the treaty-making process in 1871.
119 *Id.* at 11.
120 *Id.* at 10, 13.
121 Am. Indian Policy Review Comm'n, *Final Report* 66 (1977).
122 McDonald, *supra* note 118, at 6.
123 *Id.* at 12.
124 *Id.* at 18.
125 Natalie Landreth & Moira Smith, *Voting Rights in Alaska: 1982-2006* 4 (Mar. 2006), *available at* http://www.protectcivilrights.org/pdf/voting/AlaskaVRA.pdf.
126 Am. Civil Liberties Union, *supra* note 114, at 7.
127 *Id.*
128 *Id.*
129 *Id*.
130 McDonald, *supra* note 118, at 26.
131 *Id.* at 46.
132 *Every Native Vote Counts: Fast Facts*, Nat'l Congress of Am. Indians, *available at* http://api.ning.com/files/p5H7-N8Ot6oPr2YAnodb2julJeBCSZyUzu*8mwLExUlWlcHSl05tl5aJYJM44Plw-YObm-USu6-wzlyZ5e7uaDvXMhxGA*YxQ/NVInfographic.compressed.pdf.
133 *Current Population Survey: Voting & Registration Supplement*, U.S. Census Bureau (Nov. 2008).
134 *Current Population Survey: Voting & Registration Supplement*, U.S. Census Bureau (Nov. 2012).
135 *See Buckanaga v. Sisseton Indep. Sch. Dist.,* No. 54-5, S.D., 804 F.2d 469, 474–75 (8th Cir. 1986).
136 Ryan D. Dreveskracht, *Enfranchising Native Americans After* Shelby County v. Holder*: Congress's Duty to Act*, 70 Nat'l Law. Guild Rev. 193, 205 (2013).
137 *Stabler v. Cnty. of Thurston*, Neb., 129 F.3d 1015, 1023 (8th Cir. 1997).
138 Dreveskracht, *supra* note 136, at 205.
139 *See* Am. Civil Liberties Union, *supra* note 114, at 52–53.
140 *National Caucus of Native American of State Legislators*, Nat'l Conf. of St. Legis., http://www.ncsl.org/research/state-tribal-institute/national-caucus-native-american-state-legislators.aspx (last visited July 28, 2014) (reporting "76 members from 17 states").
141 Nat'l Congress of Am. Indians, *supra* note 132.
141a Daniel McCool et al., *Native Vote: American Indians, the Voting Rights Act, and the Right to Vote* 48–67 (2007).
142 Separate listings identifying each matter in these categories is included in the Supplemental Online Appendix, *supra* note 45, to this Report.
143 Order Re: Plaintiffs' Motion for a Preliminary Injunction Against the State Defendants, *Nick v. Bethel*, No. 3:07-cv-00098 (D. Alaska July 30, 2008).
144 Settlement Agreement, *Nick v. Bethel*, No. 3:07-cv-00098 (D. Alaska Feb. 16, 2010).
145 Tova Wang, *Ensuring Access to the Ballot for American Indians & Alaska Natives: New Solutions to Strengthen American Democracy* 9 (2012), *available at* http://www.demos.org/sites/default/files/publications/IHS%20Report-Demos.pdf.
146 *Little Thunder v. South Dakota*, 518 F.2d 1253, 1254 (8th Cir. 1975).
147 *Id.* at 1254.
148 *Id.* at 1254–55.
149 *Id.* at 1255.
150 Am. Civil Liberties Union, *supra* note 114, at 7.
151 *United States v. South Dakota*, 636 F.2d 241, 243 (8th Cir. 1980).
152 *Id.* at 244.
153 *Id.* at 243.
154 *United States v. Day Cnty.*, No. 1:99-cv-01024-RHB (D.S.D. 2000).
155 Am. Civil Liberties Union, *supra* note 114, at 19.
156 *Id.*
157 *Id.*
158 Amended Consent Judgment and Decree at 7, *United States v. Day Cnty.*, No. 1:99-cv-01024-RHB; *see also* Am. Civil Liberties Union, *supra* note 114, at 19.
159 *Emery v. Hunt*, 615 N.W.2d 590, 593 (S.D. 2000).
160 McDonald, *supra* note 118, at 55.
161 *Bone Shirt v. Hazeltine*, 336 F. Supp. 2d 976, 1028 (D.S.D. 2004).
162 *Emery*, 615 N.W.2d at 592–93.
163 *Id.* at 597.
164 *Id.* at 593.
165 S.D. Legislative Research Council, *Issue Memorandum 95-36, Majority-Minority Districts: Legislative Reapportionment After* Miller v. Johnson 6 (1995), *available at* http://legis.sd.gov/docs/referencematerials/IssueMemos/im95-36.pdf.
166 *Bone Shirt*, 336 F. Supp. 2d at 1028.
167 Laughlin McDonald et al., *Voting Rights in South Dakota: 1982-2006*, 17 S. Cal. Rev. L. & Soc. Just. 195, 196 (2007); *see also* Partial List of Determination Pursuant to Voting Rights Act of 1965, as Amended, 41 Fed. Reg. 784 (Jan. 5, 1976).
168 For a discussion of the pre-clearance requirement of Section 5, *see* Chapter 1.
169 McDonald et al., *supra* note 167, at 196–97.
170 McDonald, *supra* note 118, at 140.
171 Complaint, *Quick Bear Quiver v. Hazeltine*, No. 5:02-cv-05069-KES (D.S.D. 2002).
172 Consent Order at 2, *Quick Bear Quiver v. Hazeltine*, No. 5:02-cv-05069-KES.
173 *Id.* at 2–3.
174 McDonald, *supra* note 118, at 140.
175 *Bone Shirt v. Hazeltine*, 461 F.3d 1011, 1016 (2006).
176 *Id.*
177 *Id.* at 1019.
178 *Id.* at 1029.
179 *Blackmoon v. Charles Mix Cnty.,* CIV. 05-4017, 2005 WL 2738954, at *3 (D.S.D. Oct. 24, 2005).
180 *Blackmoon v. Charles Mix Cnty.,* 386 F. Supp. 2d 1108, 1110 (D.S.D. 2005) (order permitting discovery on plaintiff's motion for summary judgment).
181 *See id.* at 1112.
182 Am. Civil Liberties Union, *supra* note 114, at 32.
183 *Blackmoon*, 2005 WL 2738954, at *1.
184 *See id.*
185 *Id.* at *2.
186 Am. Civil Liberties Union, *supra* note 114, at 32.

187 Consent Decree at 2–3, *Blackmoon v. Charles Mix Cnty.,* No. 05-4017, (D.S.D. Dec. 4, 2007).
188 Am. Civil Liberties Union, *supra* note 114, at 32.
189 *Id.*
190 *Id.*
191 *Id.*
192 Determination Letter from Grace Chung Becker, Acting Assistant Att'y Gen., U.S. Dep't of Justice, to Charles Mix Cnty., S.D. (Feb. 11, 2008), *available at* http://www.justice.gov/crt/records/vot/obj_letters/letters/SD/l_080211.pdf.
193 *Brooks v. Gant*, No. 12-5003-KES, 2013 WL 4017036, at *1 (D.S.D. Aug. 6, 2013).
194 *See* Anna Brown, *U.S. Hispanic and Asian Populations Growing, but for Different Reasons,* Pew Res. Center (June 26, 2014), *available at* http://www.pewresearch.org/fact-tank/2014/06/26/u-s-hispanic-and-asian-populations-growing-but-for-different-reasons (reporting that since 2012, the Asian population has grown at a rate of 2.9 percent, compared to the Hispanic growth rate of 2.1 percent).
195 Ming Hsu Chen & Taeku Lee, *Reimagining Democratic Inclusion: Asian Americans and the Voting Rights Act*, 3 U.C. Irvine L. Rev. 359, 360 (2013); *see also* Brown, *supra* note 194.
196 *See*, *e.g.*, Chinese Exclusion Act of 1882, ch. 126, 22 Stat. 58, *repealed by* Act of Dec. 17, 1943, Pub. L. No. 78-199, 57 Stat. 600.
197 Naturalization Act of 1790, ch. 3, 1 Stat. 103.
198 Naturalization Act of 1870, ch. 254, 16 Stat. 254, 256.
199 *In re Ah Yup*, 1 F. Cas. 223, 224 (C.C.D. Cal. 1878).
200 *United States v. Bhagat Singh Thind*, 261 U.S. 204, 214–15 (1923).
201 Marie A. Fallinger, Yick Wo *at 125: Four Simple Lessons on the Contemporary Supreme Court*, 17 Mich. J. Race & L. 217, 228 (2012) (footnotes omitted).
202 *Yick Wo v. Hopkins*, 118 U.S. 356, 358–59 (1886).
203 Fallinger, *supra* note 201, at 223.
204 *Id.* at 227–28.
205 *Yick Wo,* 118 U.S. 356, at 373–74.
206 *Id.* at 370.
207 Fallinger, *supra* note 201, at 233–34.
208 *Korematsu v. United States*, 323 U.S. 214, 219 (1944).
209 Exec. Order No. 9066, 7 Fed. Reg. 1407 (1942).
210 Natsu Taylor Saito, *Symbolism Under Siege: Japanese American Redress and the "Racing" of Arab Americans as "Terrorists"*, 8 Asian L.J. 1, 4 (2001).
211 Wendy K. Tam Cho & Albert H. Yoon, *Pan-Ethnicity Revisited: Asian Indians, Asian American Politics, and the Voting Rights Act*, 10 Asian Pac. Am. L.J. 8, 9 (2005).
212 Act of Dec. 17, 1943, Pub. L. No. 78-199, 57 Stat. 600 (repealing the Chinese Exclusion Act).
213 Act of July 2, 1946, Pub. L. No. 79-482, 60 Stat. 416 (repealing exclusion of Indians and Filipinos and granting naturalization rights).
214 Immigration and Nationality Act of 1952, Pub. L. No. 85-414, § 311, 66 Stat. 163, 239 (permitting Japanese Americans and other Asian Americans to naturalize).
215 Chen & Lee, *supra* note 195, at 378 (citing Immigration and Nationality Act of 1965 (Hart-Cellar Act), Pub. L. No. 89-236, 79 Stat. 911).
216 *Id.*
217 *Voting Rights Act Language Assistance Amendments of 1992: Hearing on S. 2236 Before the Subcomm. on the Constitution of the S. Comm. on the Judiciary,* 102nd Cong. 134 (1992) [hereinafter Hearings on Language Assistance Amendments of 1992] (statement of Sen. Orrin Hatch).
218 *Extension of the Voting Rights Act: Hearings on H.R. 939, H.R. 2148, H.R. 3427, and H.R. 3501 Before the Subcomm. on Civil & Constitutional Rights of the H. Comm. on the Judiciary,* 94th Cong. 926 (1975) (statement of Rep. Edward R. Roybal).
219 *Id.*
220 *See Hearings on Language Assistance Amendments of 1992*, *supra* note 217, at 144 (statement by Sen. Hatch).
221 *See* 42 U.S.C. § 1973aa-1a(b)(2)(A)(II) (applying the bilingual voting materials requirement to areas in which "more than 10,000 of the citizens of voting age of such political subdivision are members of a single language minority and are limited-English proficient").
222 *See Hearings on Language Assistance Amendments of 1992*, *supra* note 217, at 254 (letter from Morton H. Halperin & Antonio J. Califa, Legislative Counsel, Am. Civil Liberties Union) (discussing the need for expanded coverage); *id.* at 294 (statement of the Nat'l Asian Pacific Am. Legal Consortium) (discussing the communities in these jurisdictions that would benefit from a 10,000 person population benchmark).
223 *See* Chen & Lee, *supra* note 195, at 361.
224 Janelle Wong et al., *Asian American Political Participation: Emerging Constituents and Their Political Identities* 3 (2011).
225 Jeffrey S. Passel & D'Vera Cohn, Pew Research Ctr., *U.S. Population Projections: 2005–2050* 2 (2008).
226 Karthick Ramakrishnan & Farah Z. Ahmad, Ctr. for Am. Progress, *Demographics: Part of the "State of Asian Americans and Pacific Islanders" Series* 2 (2014).
227 Brown, *supra* note 194.
228 Wong et al., *supra* note 224, at 99.
229 *See* Chen & Lee, *supra* note 195, at 392.
230 *Id.*
231 *Id.* (footnote omitted).
232 *See id.* at 396 (discussing historically low, albeit increasing, geographical compactness as one barrier to Asian Americans' ability to bring successful Section 2 claims).
233 Wong et al., *supra* note 224, at 27.
234 *Id.*; see *Current Population Survey*, U.S. Census Bureau (Nov. 2012).
235 *Id.* at 56.
236 *See* Seung-Jin Jang, *Get Out on Behalf of Your Group: Electoral Participation of Latinos and Asian Americans*, 31 Pol. Behav. 511, 512 (2009) (pointing to past research that found "length of residence and nativity" significantly affected voter participation rates).
237 *Id.* at 516.
238 In its 1975 amendment of the Voting Rights Act, Congress mandated the use of bilingual assistance materials in jurisdictions with proportionally high populations of language minorities, indicating that "voting discrimination against citizens of language minorities is pervasive and national in scope." Voting Rights Act Amendments of 1975, Pub. L. No. 94-73, § 203, 89 Stat. 400, 401 (1975).
239 Asian Americans Advancing Justice, *Voices of Democracy: Asian Americans and Language Access During the 2012 Elections* 5 (2013) (citing Asian Pacific Am. Legal Ctr., *Asian Americans at the Ballot Box: The 2008 General Election in*

Los Angeles County 24 (2011), *available at* http://apalc.org/sites/default/files/APALC_BallotBox_LA2008_FINAL.pdf.

240 Press Release, Asian & Pacific Islander Am. Vote, New Poll Finds Major Political Parties Ignore Asian Americans, Huge Gaps and Opportunities for Engagement Remain Untapped (May 4, 2012), *available at* http://www.apiavote.org/newsroom/press-releases/2012/new-poll-finds-major-political-parties-i.

241 *See generally National Asian Pacific American Political Almanac (2014–2015)* (Don T. Nakanishi & James Lai eds., 2014).

242 Two notable exceptions are U.S. Representative Bobby Scott from Virginia's 3rd District and Attorney General of California, Kamala Harris. Scott, who is both Asian American and African American, was elected in a majority African American district. Harris, also Asian American and African American, was elected in a statewide election. For further discussion of how voting patterns in Los Angeles County in the election of Harris may demonstrate coalitions between multiple minority groups, *see* Barreto et al., *supra* note 43, at 5–6.

243 Wong et al., *supra* note 224, at 116.

244 *Id.*

245 *Id.* at 75.

246 *Id.* at 65.

247 Asian Am. Legal Def. & Educ. Fund, *Asian American Access to Democracy in the 2008 Elections* 7 (2009), *available at* http://www.aaldef.org/docs/AALDEF-AA-Access-to-Democracy-2008.pdf.

248 *Id.* at 12.

249 *Id.* at 13.

250 *Id.* at 9.

251 *Id.* at 14.

252 Asian Am. Legal Def. & Educ. Fund, *Asian American Access to Democracy in the 2012 Elections* 16 (2013).

253 *See* Supplemental Online Appendix, *supra* note 45.

254 *See id.*

255 *See id.*

256 *See id.*; *see also* Determination Letter from Loretta King, Acting Assistant Att'y Gen., U.S. Dep't of Justice, to State of Georgia (May 29. 2009), *available at* http://www.justice.gov/crt/records/vot/obj_letters/letters/GA/l_090529.pdf (describing the voter verification program submitted for preclearance).

257 *See* Chen & Lee, *supra* note 195, at 390; *but see id.* at 375 n.80 (pointing to eight Section 2 cases concerning Asian American voters).

258 *See* Felicia Sze, *Failing Predictions in Pursuit of Proportional Representation: Assuring Asian American Voter Strength in San Francisco Through 2 Litigation*, 11 Asian Am. L.J. 97, 105 (2004).

CHAPTER 5

1 *Reynolds v. Sims*, 377 U.S. 533, 555 (1964).

2 *Id.* at 546.

3 *Id.* at 555.

4 *See generally* U.S. Comm'n on Civil Rights, *Political Participation, A study of the participation by Negroes in the electoral and political processes in 10 Southern States since passage of the Voting Rights Act of 1965* 21–39 (1968).

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41 *Id.* at 17.
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45 *Quiet Revolution in the South: The Impact of the Voting Rights Act 1965-1990* 23 (Chandler Davidson & Bernard Grofman eds., 1994).
46 *Id.*
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48 Davidson & Grofman, *supra* note 45, at 24.
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62 *United States v. Osceola Cnty., Fla.*, 475 F. Supp. 2d 1220, 1235 (M.D. Fla. 2006).
63 *Id.* at 1222.
64 *Id.* at 1223.
65 *Id.* at 1224.
66 *Id.*
67 *Id.* at 1225–26. Around the same time, the County was failing to provide Spanish-speaking citizens an equal opportunity to vote. In 2002, the United States sued the County alleging this denial of equal opportunity to vote based on "the failure of poll officials to communicate effectively with Spanish-speaking voters, the refusal to allow certain Spanish-speaking voters assistance in voting by the person of their choice, and hostile remarks by poll officials." *Id.* at 1226. The case was settled by consent decree, though in 2005 the United States advised the county that its Spanish language program was not equal in scope and effectiveness to its English language program, and the county agreed, in writing, to continue using the consent decree as a guide to complying with the VRA and to take additional steps to improve its Spanish language program.
68 *Id.* at 1232.
69 *Id.* at 1232–35.
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71 *United States v. Village of Port Chester*, No. 06 Civ. 15173 (SCR), 2008 WL 190502, at *1 (S.D.N.Y. Jan. 17, 2008).
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73 *Id.* at 420.
74 *Id.* at 438.
75 *Id.* at 431–37.
76 *United States v. Village of Port Chester*, Brennan Ctr. for Justice (Apr. 22, 2011), https://www.brennancenter.org/legal-work/united-states-v-village-port-chester.
77 *United States v. Blaine Cnty., Mont.,* 363 F.3d 897, 900 (9th Cir. 2004).
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84 *Id.*at 588.
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86 *Id.* at 587.
87 *Large v. Fremont Cnty., Wyo.*, 709 F. Supp. 2d 1176, 1231 (D. Wyo. 2010).
88 *Id.* at 1182.
89 *Id.* at 1183.
90 *Id.* at 1184.
91 *Id.* at 1186–88.
92 *Id.* at 1219–20.
93 *Id.* at 1220.
94 *Id.* at 1232.
95 *Large v. Fremont Cnty., Wyo.*, 670 F.3d 1133, 1136 (10th Cir. 2012).
96 *Id.*
97 Order on Remedial Plan at 25, *Large v. Fremont Cnty., Wyo.,* No. 2:05-cv-00270-ABJ (D. Wyo. Aug. 10, 2010).
98 *Id.* at 31. The decision was affirmed on appeal (based on the failure of the hybrid plan to conform to state law, which did not allow for such hybrid plans). *Large*, 670 F.3d at 1148–49.
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100 *Id.* at 1154.
101 *Id.* at 1154–55.
102 *Id.* at 1155–61.
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107 *Id.* at 1300–01.
108 *Id.* at 1312.
109 *Fayette County*, 950 F. Supp. 2d at 1316–18.
110 *United States v. Charleston Cnty.*, 316 F. Supp. 2d 268, 273 (D.S.C. 2003).
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112 *Id.* at 278, 280, 285 n.20.
113 *Id.* at 292.
114 *Id.* at 294.
115 *Id.* at 286 n.23.
116 *Id.*
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125 *Id.* at 3.
126 *Id.*
127 *Id.*
128 *Id.* at 5.
129 Order Adopting Findings & Recommendations, *Jackson v. Wolf Point Sch. Dist.*, No. CV-13-65-GF-BMM-RKS (D. Mont. Apr. 9, 2014).
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133 *Id.*
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138 *Id.*
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159 *Id.* at 855.
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170 *Id.* at 1026.
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175 *Cook*, 573 F.3d at 1145–46.
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178 *Id.*
179 *Id.*
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182 *Id.*
183 *Id.* at 427.
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186 *LULAC*, 548 U.S. at 424.
187 *Id.* at 423–24.
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189 *Id.* at 441.
190 *Id.*at 438–439.
191 *Id.* at 440, 442.
192 *Texas v. United States*, 887 F. Supp. 2d 133, 138 (D.D.C. 2012).
193 *Id.* at 178.
194 *Id.* at 152, 161–62, 177.
195 *Id.* at 162.
196 *Id.* at 163.
197 *Id.* at 163–164.
198 *Id.* at 164.
199 *Id.* at 162.
200 *See id.* at 197–247 (lengthy appendix detailing the court's factual and legal findings).
201 *Id.* at 197.
202 *Id.*
203 *Id.* at 153.
204 *Id.* at 160.
205 *Id.* at 177.
206 *Id.* at 177–78.
207 *Id.* at 177.
208 *Id.* at 178.
209 *Id.* at 234.
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211 *Id.* at 178 (emphasis in original).
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213 Scheduling Order at 3–4, *Perez. v. Perry*, No. 5:11-cv-00360-OLG-JES-XR (W.D. Tex. Oct. 18, 2013).

CHAPTER 6

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2 Decl. of Russell Weaver at A7688, *Florida v. United States*, No. 1:11-cv-01428 (D.D.C. April 10, 2012).
3 *League of Women Voters of Fla. v. Cobb*, 447 F. Supp. 2d 1314, 1317 (S.D. Fla. 2006).
4 *Id.* at 1316.
5 *League of Women Voters of Fla. v. Browning*, 863 F. Supp. 2d 1155, 1159-65 (N.D. Fla. 2012).
6 *Id.* at 1157–58.
7 United States' and Defendant-Intervenors' Joint Submission Concerning Proposed Findings of Fact and Conclusions of Law at 26, *Florida v. United States*, No. 1:11-cv-01428 (D.D.C. May 3, 2012).
8 Decl. of Russell Weaver, *supra* note 2, at A7688-89.
9 *Id.*
10 United States' and Defendant-Intervenors' Joint Submission Concerning Proposed Findings of Fact and Conclusions of Law, *supra* note 7, at 31.
11 *Id.* at 27.
12 *Id.* at 32.
13 42 U.S.C. § 1973gg-5(a)(6)(A). Federal public assistance programs covered by Section 7 include, inter alia: the Supplemental Nutrition Assistance Program (SNAP, formerly the Food-Stamp Program); the Special Supplemental Nutrition Program for Women, Infants and Children (WIC); the Temporary Assistance for Needy Families (TANF) program (formerly the Aid to Families with Dependent Children or AFDC program); the Medicaid program; and the State Children's Health Insurance Program (SCHIP). State public assistance programs are also covered. *The National Voter Registration Act of 1993 (NVRA)*, U.S. Dep't of Justice, http://www.justice.gov/crt/about/vot/nvra/nvra_faq.php (last visited July 28, 2014).
14 U.S. Dep't of Health & Human Servs., *Characteristics and Financial Circumstances of TANF Recipients, Fiscal Year 2010: Appendix* tbl.8 (2011), *available at* http://www.acf.hhs.gov/sites/default/files/ofa/appendix_fy2011_final_amend.pdf; Kelsey Farson Gray & Esa Eslami, U.S. Dep't of Agric. Food and Nutrition Serv., Office of Policy Support, *Characteristics of Supplemental Nutrition Assistance Program Households: Fiscal Year 2012*, at 76 tbl.B.10 (2014), *available at* http://www.fns.usda.gov/sites/default/files/2012Characteristics.pdf.

15 *Id.*
16 *Id.*
17 Decl. of Russell Weaver, *supra* note 2, at A7688.
18 *Voting Rights Litigation*, Lawyers' Comm. for Civil Rights Under Law, http://www.lawyerscommittee.org/projects/voting_rights/page?id=0025 (last visited July 28, 2014).
19 *Voting Section Litigation*, U.S. Dep't of Justice, http://www.justice.gov/crt/about/vot/litigation/caselist.php (last visited July 28, 2014).
20 Lisa J. Danetz, Senior Counsel, Dēmos, Testimony to the U.S. Commission on Civil Rights: Increasing Compliance with Section 7 of the NVRA (April 19, 2013), *available at* http://www.demos.org/sites/default/files/publications/Final%20USCCR%20Testimony.pdf.
21 *Id.*
22 *Id.*
23 *See Miss. State Chapter, Operation Push v. Allain*, 674 F. Supp. 1245, 1251-52 (N.D. Miss. 1987), *aff'd* 932 F.2d 400 (5th Cir. 1991).
24 *Id.* at 1268. Plaintiffs also brought constitutional claims based on the clear discriminatory intent of the 1892 law and subsequent revisions, but the district judge found it unnecessary to address those claims in light of his statutory ruling. *Id.*
25 *See* 42 U.S.C. §§ 1973gg-3 to -5.
26 *Young v. Fordice*, 520 U.S. 273, 291 (1997).
27 Determination Letter from Isabelle Katz Pinzler, Acting Assistant Att'y Gen., U.S. Dep't of Justice, to State of Mississippi (Sept. 22, 1997), *available at* http://www.justice.gov/crt/records/vot/obj_letters/letters/MS/MS-2650.pdf.
28 *Arizona v. Inter Tribal Council of Ariz.*, 133 S. Ct. 2247 (2013).
29 *See* Voter Registration, Op. Ariz. Att'y Gen., No. 113-011 (R13-016) (Oct. 7, 2013), *available at* https://www.azag.gov/sites/default/files/sites/all/docs/Opinions/2013/I13-011.pdf; Letter from Kris W. Kobach, Sec'y of State, State of Kan., to Alice Miller, Acting Exec. Dir., Election Assistance Comm'n (Aug. 2, 2013), *available at* http://www.eac.gov/assets/1/Documents/KWK%20to%20EAC%20%20(8%202%2013)-with-Kansas-to-Counties-OCR.pdf.
30 *Yearbook of Immigration Statistics: 2013*, Dep't of Homeland Security, http://www.dhs.gov/publication/yearbook-immigration-statistics-2013-naturalizations (click to download tbl.21).
31 *See* Determination Letter from Loretta King, Acting Assistant Att'y Gen., U.S. Dep't of Justice, to State of Georgia (May 29, 2009), *available at* http://www.justice.gov/crt/records/vot/obj_letters/letters/GA/l_090529.php [hereinafter King Determination Letter].
32 Compl. at ¶¶ 33–40, *Morales v. Handel*, No. 1:08-cv-3172 (N.D. Ga. October 9, 2008) [hereinafter *Morales* Complaint].
33 *See Morales v. Handel*, No. 1:08–CV–3172, 2008 WL 9401054 (N.D. Ga. Oct. 27, 2008).
34 *Morales* Complaint, *supra* note 32, at ¶¶ 49–63.
35 *Morales*, 2008 WL 9401054 at *8–9.
36 King Determination Letter, *supra* note 31.
37 *Id.*
38 *Id.*
39 *See Morales v. Kemp*, Lawyers' Comm. for Civil Rights Under Law, http://www.lawyerscommittee.org/projects/voting_rights/page?id=0021 (last visited July 28, 2014).
40 Compl., *Arcia v. Detzner*, No. 1:12-CV-22282 (S.D. Fla., June 19, 2012).
41 *Id.* at ¶ 26.
42 *Arcia v. Florida Secretary of State*, 746 F. 3d 1273, 1276–77 (11th Cir. 2014).
43 *Id.See* generally *What is SAVE?,* U.S. Citizenship and Immigration Services, http://www.uscis.gov/save/what-save/what-save (last visited July 28, 2014).
44 *Arcia*, 746 F. 3d at 1286.
45 Compl., *Mi Familia Vota Education Fund v. Detzner*, No. 8:12-CV-01294-JDW-MAP (M.D. Fla. June 8, 2012).
46 Order of Dismissal, *Mi Familia Vota Education Fund v. Detzner*, No. 8:12-CV-01294-JDW-MAP (M.D. Fla. July 24, 2013).
47 Brandon Larrabee, *Appeals Court: Florida Voter Purge Violated Federal Law*, News-Press Apr. 2, 2014, http://www.news-press.com/story/news/politics/2014/04/01/appeals-court-florida-voter-purge-violated-federal-law/7181283/.
48 Rita Bettis, Written Testimony, National Commission on Voting Rights, Hearing in Kansas City, Missouri (Apr. 22, 2014) (on file with the Lawyers' Committee).
49 Aff. in Support of Resistance to Motion to Dismiss at 1–2, *Am. Civil Liberties Union v. Iowa Sec'y of State Matt Schultz*, No. CVCV009311, 2012 WL 4054139 (Iowa Dist. Sept. 13, 2012), *available at* http://moritzlaw.osu.edu/electionlaw/litigation/documents/PetitionersExhibitList.pdf.
50 Bettis, *supra* note 48, at 1–2.
51 *Id.*
52 Ariz. Rev. Stat. Ann. § 16-166(F); Kan. Stat. Ann. § 25-2309(l); Ala. Code § 31-13-28; Ga. Code Ann. § 21-2-216(g)(1); *see also* Wendy R. Weiser & Erik Opsal, Brennan Ctr. for Justice, *The State of Voting in 2014*, at 3 (2014), *available at* http://www.brennancenter.org/analysis/state-voting-2014.
53 42 U.S.C. §§ 1973gg-4(a)(1), 1973gg-7(a)(2).
54 *See Register to Vote in Your State by Using This Postcard Form and Guide*, http://www.eac.gov/assets/1/Documents/Federal%20Voter%20Registration_6-25-14_ENG.pdf (last visited July 25, 2014).
55 *See* 42 U.S.C. § 1973gg(b).
56 *Arizona v. ITCA*, 133 S. Ct. 2247 (2013).
57 *Id.*Plaintiffs also asserted in that litigation that the proof-of-citizenship requirement violated Section 2 of the Voting Rights Act, but that claim was not resolved on appeal to the Ninth Circuit and was not addressed by the Supreme Court. *Gonzalez v. Arizona*, 677 F. 3d 383, 404 n.30 (9th Cir. 2012).
58 *Kobach v. U.S. Election Assistance Comm'n*, No. 13–cv–4095–EFM–TJJ, 2014 WL 1094957 (D. Kan. Mar. 19, 2014); *See generally* U.S. Election Assistance Comm'n, *Memorandum of Decision Concerning State Requests to Include Additional Proof-of-Citizenship Instructions on the National Mail Registration Form* 41–43 (2014), [hereinafter EAC Proof-of-Citizenship Decision] *available at* http://www.eac.gov/assets/1/Documents/20140117%20EAC%20Final%20Decision%20on%20Proof%20of%20Citizenship%20Requests%20-%20FINAL.pdf.The EAC denied Georgia's similar request, but the state is not participating in the lawsuit with Arizona and Kansas. *Id.*
59 *Kobach*, 2014 WL 1094957 at *13.
60 *Kobach v. U.S. Election Assistance Comm'n*, Nos. 14-3062 and 14-3072 (10th Cir. June 3, 2014).

61 Erik Eckholm, *After Ruling, Alabama Joins 2 States in Moving to Alter Voting Rules*, N.Y. Times (Mar. 21, 2014), http://www.nytimes.com/2014/03/22/us/after-ruling-alabama-joins-2-states-in-moving-to-alter-voting-rules.html.

62 EAC Proof-of-Citizenship Decision, *supra* note 58, at 28–31, 33–35.

63 Kristen Baker & Nelly Ward, Brennan Ctr. for Justice, *Survey of Georgia Elections Officials on Voting by Non-Citizens* 1 (2009), *available at* http://www.brennancenter.org/sites/default/files/legacy/blog/GA.survey.e.officials.doc.

64 Brief for Election Administrators as Amici Curiae in Support of Respondents, at 7, *Arizona v. ITCA*, 133 S.Ct. 2247 (2013), *available at* http://moritzlaw.osu.edu/electionlaw/litigation/documents/AmicusBriefofElectionAdministrators.pdf.

65 Jessica Gonzalez, Congressional Hispanic Caucus Institute, *New State Voting Laws: A Barrier to the Latino Vote?* 5 (2012).

66 EAC Proof-of-Citizenship Decision, *supra* note 58, at 42–43.

67 Determination Letter from Isabelle Katz Pinzler, Acting Assistant Att'y Gen., U.S. Dep't of Justice, to State of Tex. (Jan. 16, 1996), *available at* http://www.justice.gov/crt/records/vot/obj_letters/state_letters.php?state=tx.

68 *Id.*

69 *Id.*

70 42 U.S.C. § 1973gg-6(b)-(d).

71 42 U.S.C. § 1973gg-6(e).

72 *See* U.S. Civil Rights Comm'n, *Voting Irregularities in Florida During the 2000 Presidential Election* ch. 5 (2001).

73 *Id.; see also* Tova Andrea Wang, *The Politics of Voter Suppression: Defending and Expanding Americans' Right to Vote* 120 (2012).

74 Myrna Pérez, Brennan Ctr. for Justice, *Voter Purges* 1 (2008), *available at* http://www.brennancenter.org/sites/default/files/legacy/publications/Voter.Purges.f.pdf; *Florida Scraps Flawed Felon Voting List*, USA Today (July 10, 2004), http://usatoday30.usatoday.com/news/nation/2004-07-10-felons-vote-fla_x.htm; Laleh Ispahani & Nick Williams, Am. Civil Liberties Union et al., *Purged* (2004), *available at* https://www.aclu.org/files/FilesPDFs/purged%20-voting_report.pdf.

75 Wang, *supra* note 73, at 115. ("The huge number of people with felony convictions has everything to do with the change in approach to criminal law in the 1980s and 1990s that increased the number of crimes considered felonies. And even though crime rates dropped in the 1990s, the national prison population grew at an unusually high rate because of the so-called war on drugs that increased penalties for drug crimes.These new sentencing rules for drug offenses also had a disproportionate effect on minority communities, particularly African Americans. African Americans are convicted of drug crimes at a much higher rate than white Americans, despite the fact that white Americans report higher rates of drug use.The disparities in the criminal justice system for African Americans and whites can be seen throughout the process from arrest, conviction, sentencing, and incarceration.").

76 *Richardson v. Ramirez*, 418 U.S. 24 (1974).

77 *Id.* at 54.

78 *Hunter v. Underwood*, 471 U.S. 222 (1985).

79 Am. Civil Liberties Union et al., *Democracy Imprisoned: A Review of the Prevalence and Impact of Felony Disenfranchisement Laws in the United States* 2 (2013) [hereinafter *Democracy Imprisoned*].

80 *See generally* Jeff Manza & Christopher Uggen, *Locked Out: Felon Disenfranchisement and American Democracy* (2008).

81 Compl., *Johnson v. Bush*, No. 1:00-cv-03542-JLK (S.D. Fla. Sept. 21, 2000).

82 *Id.* at ¶ 31.

83 *Id.* at ¶ 44.

84 *Johnson v. Bush*, 214 F. Supp. 2d 1333, 1338–39 (S.D. Fla. 2002).

85 *Johnson v. Governor of State of Florida*, 353 F.3d 1287 (11th Cir. 2003).

86 *Johnson v. Governor of State of Florida*, 405 F.3d 1214, 1228 (11th Cir. 2005) (en banc) (citing *Richardson v. Ramirez*, 418 U.S. 24, 48–52 (1974)).

87 *Democracy Imprisoned, supra* note 79, at 6.

88 *Farrakhan v. Gregoire*, 590 F.3d 989 (9th Cir. 2010).

89 *Id.*

90 *Farrakhan v. Gregoire*, 623 F.3d 990, 993 (9th Cir. 2010) (en banc) (emphasis omitted).

91 *Howard v. Gilmore*, No. 99-2285, 2000 WL 203984 (4th Cir. Feb. 23, 2000); *see also* Anita S. Earls et al., RenewtheVRA.org, *Voting Rights in Virginia: 1982-2006*, at 23–24 (2006).

92 *Democracy Imprisoned, supra* note 79, at 5.

93 *Id.*

94 National Commission on Voting Rights, Richmond, Virginia Hearing 27 (Apr. 29, 2014) (transcript on file with the Lawyers' Committee).

95 Ky. Const. § 145.

96 Ky. Advisory Comm. to the U.S. Comm'n on Civil Rights, *Voting Rights in Kentucky: Felons Who Have Completed all Terms of Their Sentences Should Have the Right to Vote 22* (2009), [hereinafter Voting Rights in Kentucky] *available at* http://www.usccr.gov/pubs/KYVotingRightsReport.pdf.

97 Christopher Uggen, Sarah Shannon & Jeff Manza, Sentencing Project, *State-Level Estimates of Felon Disenfranchisement in the United States, 2010*, at 16 tbl.3 (2012), *available at* http://www.sentencingproject.org/doc/publications/fd_State_Level_Estimates_of_Felon_Disen_2010.pdf.

98 *Voting Rights in Kentucky, supra* note 96, at 22.

99 Phillip M. Bailey, *Opposition to Felon Voting Rights Thawing, Kentucky Lawmaker Says*, WFPL News (Oct. 21, 2013), http://wfpl.org/post/opposition-felon-voting-rights-thawing-kentucky-lawmaker-says.

100 Bettis, *supra* note 48, at 2.

101 Thomas H. Castelli, Written Testimony, National Commission on Voting Rights, Hearing in Nashville, Tennes*see* 3 (May 8, 2014) (on file with the Lawyers' Committee).

102 *Id.*

103 *See generally* National Commission on Voting Rights, California State Hearing 50–53 (Jan. 30, 2014) (transcript on file with the Lawyers' Committee).

104 National Commission on Voting Rights, Minnesota and Wisconsin Hearing 113 (Feb. 25, 2014) (transcript on file with the Lawyers' Committee).

105 National Commission on Voting Rights, Miami, Florida Hearing 34 (Mar. 31, 2014) (transcript on file with the Lawyers' Committee).

106 *See*, *e.g., South Carolina v. United States*, 898 F. Supp. 2d 30, 32 (D.D.C. 2012); *Texas v. Holder*, 888 F. Supp. 2d 113, 115 (D.D.C. 2012).

107 For Louisiana, see Tyler Bridges, *Louisiana's Voter ID Law from 1997 Eases Effects of Supreme Court Decision*, The Lens (June 27, 2013), http://thelensnola.org/2013/06/27/louisianas-voter-id-law-from-1997-eases-effects-of-supreme-court-decision/; *see also* Wendy Underhill, *Voter Identification Requirements | Voter ID Laws*, National Conference of State Legislatures (June 25, 2014), http://www.ncsl.org/research/elections-and-campaigns/voter-*Id.* aspx#Details ("If the applicant does not have identification, s/he shall sign an affidavit to that effect before the commissioners, and the applicant shall provide further identification by presenting his current registration certificate, giving his date of birth or providing other information stated in the precinct register that is requested by the commissioners."). For Virginia, see *Election 2012: Voting Laws Roundup*, Brennan Ctr. for Justice (Oct. 11, 2012), http://www.brennancenter.org/analysis/election-2012-voting-laws-roundup ("Virginia passed a law requiring an ID to vote, including various forms of photo. *Id.*This law eliminated an option to sign an affidavit to confirm identity when voting at the polls or applying for an absentee ballot in person.").

108 42 U.S.C. § 15483(b)(2)(A). Acceptable identifying documents include current and valid photo identification or a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter. *Id.*

109 *See* Sarah Childress, *With Voting Rights Act Out, States Push Voter ID Laws*, PBS Frontline (June 26, 2013), http://www.pbs.org/wgbh/pages/frontline/government-elections-politics/with-voting-rights-act-out-states-push-voter-id-laws/.

110 Martha Bergmark, *Mississippi's Secretary of State Moves to Enforce Voter ID Law*, Huffington Post (July 10, 2013), www.huffingtonpost.com/martha-bergmark/voting-rights-act-shelby-county-v-holder_b_3575216.html. Mississippians in 2011 voted in favor of an initiative to amend the State Constitution to require that all voters seeking to vote in person (with certain limited exceptions) present a government-issued photo ID in order to cast a ballot that will be counted. A subsequent analysis of the initiative vote by the Lawyers' Committee showed that voting on the ballot measure was highly racially polarized—over 75% of non-white voters opposed the initiative while only about 17% of white voters opposed it. *See* Russell C. Weaver, Lawyers' Comm. for Civil Rights Under Law, *Pulling Back the Curtain: An Analysis of Racial Voting Shows that Mississippi's Ugly History of Voter Suppression Continues* (2012), *available at* http://www.lawyerscommittee.org/admin/site/documents/files/Pulling-Back-the-Curtain.pdf.

111 Tomas Lopez, Brennan Ctr. for Justice, *Shelby County: One Year Later* 3 (2014), *available at* http://www.brennancenter.org/sites/default/files/analysis/Shelby_County_One_Year_Later.pdf; *see also* Kara Brandeisky & Mike Tigas, *Everything That's Happened Since Supreme Court Ruled on Voting Rights Act*, Pro Publica (Nov. 1, 2013), http://www.propublica.org/article/voting-rights-by-state-map.

112 Indeed, incidents of fraud perpetrated by voters of any kind are rare. *See*, *e.g.,* Lorraine C. Minnite, *The Myth of Voter Fraud* (2010); Justin Levitt, Brennan Ctr. for Justice, *The Truth About Voter Fraud* (2007); Natasha Khan & Corbin Carson, *Comprehensive Database of U.S. Voter Fraud Uncovers No Evidence That Photo ID Is Needed*, News 21 (Aug. 12, 2012), http://votingrights.news21.com/article/election-fraud/.

113 *See* Lorraine C. Minnite, Project Vote, *The Politics of Voter Fraud* (2007); Eric Lipton & Ian Urbina, *In 5-Year Effort, Scant Evidence of Voter Fraud*, N.Y. Times (Apr. 12, 2007), www.nytimes.com/2007/04/12/washington/12fraud.html?pagewanted=all&_r=0.

114 In early 2007, there was a major political controversy over the firings of several U.S. attorneys.As a larger picture of the politicization of the Department of Justice emerged, especially the Civil Rights Division, the focal point was the firing and forced resignations of nine U.S. attorneys and the consideration of three more for sudden removal, for apparent political reasons. As it turned out, five of those twelve were targeted because they had not pursued alleged voter fraud accusations with sufficient vigor for the political operatives in the Bush administration. *See* Lipton & Urbina, *supra* note 113; *see also* Dan Eggen & Amy Goldstein, *Voter Fraud Complaints by GOP Drove Dismissals*, Wash. Post (May 14, 2008) http://www.washingtonpost.com/wp-dyn/content/article/2007/05/13/AR2007051301106.html; Eric Lipton, *Panel Asks Official about Politics in Hiring*, N.Y. Times (June 6, 2007) http://www.nytimes.com/2007/06/06/washington/06justice.html; Frank Morris, *Attorneys Scandal May be Tied to Missouri Voting*, NPR (May 3, 2007) http://www.npr.org/templates/story/story.php?storyId=9981606

115 According to Lorraine C. Minnite,

> [n]o state considering or passing restrictive voter identification laws has documented an actual problem with voter fraud.In litigation over the new voter identification laws in Wisconsin, Indiana, Georgia and Pennsylvania, election officials testified they have never seen cases of voter impersonation at the polls. Indiana and Pennsylvania stipulated in court that they had experienced zero instances of voter fraud.
>
> When federal authorities challenged voter identification laws in South Carolina and Texas, neither state provided any evidence of voter impersonation or any other type of fraud that could be deterred by requiring voters to present photo identification at the polls.

Lorraine C. Minnite, *SSN Key Findings: The Misleading Myth of Voter Fraud in American Elections* (2014), *available at* http://www.scholarsstrategynetwork.org/sites/default/files/ssn_key_findings_minnite_on_the_myth_of_voter_fraud.pdf; *see also Applewhite v. Pennsylvania*, No. 330 MD 12, 2012 WL 3332376 (Pa. Commw. Ct. Aug. 15, 2012), vacated, 617 Pa. 563 (2012), remanded to 2012 WL 4497211 (Pa. Commw. Ct. Oct. 2, 2012), *subsequent determination* in 2014 WL 184988 (Pa. Commw. Ct. Jan. 17, 2014) ("The parties are not aware of any incidents of any in-person voter fraud in Pennsylvania and do not have direct personal knowledge of in[-]person voter fraud elsewhere"); Nick Wing, *Pennsylvania Voter ID Law Trial Set To Begin As State Concedes It Has No Proof Of In-Person Voter Fraud*, Huffington Post (July 24, 2012) http://www.huffingtonpost.com/2012/07/24/pennsylvania-voter-id-trial_n_1697980.html. In North Carolina,

> [t]he state presented no tangible evidence of voter fraud to justify the new restrictions. "There is no evidence we had problems with these enhanced forms of participation," Senator Dan Blue, the Democratic minority leader, testified. (Ironically, the law does nothing to restrict absentee voting, where the potential for fraud is greatest.)

Ari Berman, *North Carolina Will Determine the Future of the Voting Rights Act*, The Nation (July 10, 2014) http://www.thenation.com/blog/180608/north-carolina-will-determine-future-voting-rights-act#; *see also* Press Release, Advancement Project, North Carolina's Answer to Lawsuit Offers No Justification for Making It Harder to Vote (Oct. 21, 2013), http://www.advancementproject.org/news/entry/north-carolinas-answer-to-lawsuit-offers-no-justification-for-making-it-har#sthash.hF5kCChE.dpuf.

116 *Crawford v. Marion County Election Bd.*, 553 U.S. 181 (2008).

117 *Frank v. Walker*, No. 11-CV-01128, 2014 WL 1775432, at *6 (E.D. Wisc. Apr. 29, 2014).

118 Said Rep. Todd Rokita (R-IN), a former Indiana Secretary of State:

> Whether or not you agree that in-person voter impersonation fraud exists -- and I will say that as eight years of being Indiana's Secretary of State, it does exist, we have allegations made every election . . . [b]ut if it's happening in Indiana, it's happening everywhere from New York to California. . . .
>
> Now these gentleman and others say 'well you can't produce one case, you can't produce one conviction, therefore it doesn't exist,' the word evidence was used. Well that's not true, there's a lot of evidence . . . .
>
> There are several cases that I presented to prosecutors who didn't take up the case, not because of a lack of evidence, but think about the kind of fraud it is, think about the kind of crime it is . . . . It's something that happens in an instant and than it's gone. . . .

It's the kind of cases, the kind of fraud, that's very hard to prosecute, but that doesn't mean it doesn't exist . . . .

Ryan J. Reilly, *GOP Rep: Voter Fraud 'Happening Everywhere,' But Prosecutors Wouldn't Take Cases*, Talking Points Memo (Sept. 13, 2011) http://talkingpointsmemo.com/muckraker/gop-rep-voter-fraud-happening-everywhere-but-prosecutors-wouldn-t-take-cases-video.Rokita said that the Indiana voter ID law

> is intended to encourage "faith in the election process, and in the integrity of it. Identify theft is the fastest-growing problem in America."
>
> He acknowledges there have been no prosecutions for impersonating a voter. "But we still have a right to protect ourselves against the possibility of voter fraud," he said.

ID Laws Spur Voting Legal Battle, Assoc. Press (Jan. 23, 2008) http://usatoday30.usatoday.com/news/nation/2008-01-23-voting-court_N.htm.Testifying before the Indiana Committee on House Administration, he said

> This is not about voter intimidation. It is about voter confidence. It is about the right of a legally registered voter to have her ballot counted and to expect that ballot to have exactly the same weight as every other legally registered voter's ballot. Inherent in this is the right not to have her vote diluted or cancelled out by someone who would act to defraud the system. Requiring government issued photo identification at the polls is a way to ensure this.

Testimony of Indiana Secretary of State Todd Rokita for the Committee on House Administration, Indiana Sec'y of State, Elections Division (Feb. 9, 2005), www.in.gov/sos/3183.htm. North Carolina House Speaker Thom Tillis offered a similar rationale for North Carolina's voter ID law:

> "There is some evidence of voter fraud, but that's not the primary reason for doing this," Tillis told Melvin. "We call this restoring confidence in government," Tillis said. "There are a lot of people who are just concerned with the potential risk of fraud."
>
> He added a voter ID law "would make nearly three-quarters of the population more comfortable and more confident when they go to the polls."

Laura Leslie, *Tillis: Fraud 'Not the Primary Reason' for Voter ID Push*, WRAL (updated Mar. 17, 2013), www.wral.com/tillis-actual-voter-fraud-not-the-primary-reason-for-voter-id-push-/12231514/. The U.S. Supreme Court has expressed similar reasoning:

> Voter fraud drives honest citizens out of the democratic process and breeds distrust of our government. Voters who fear their legitimate votes will be outweighed by fraudulent ones will feel disenfranchised.

Purcell v. Gonzalez, 549 U.S. 1, 4 (2006) (per curiam). In *Purcell*,

> The state Respondents' brief was most emphatic in its advocacy of a state interest to restore confidence in elections. Citing Gallup and Rasmussen polls attesting to the widespread lack of confidence Americans have in the integrity of elections, the state's brief contained an entire subsection titled, "The need to preserve public confidence in elections justifies the Voter ID Law." Because opportunities for abuse exist, this state interest in restoring confidence is compelling, the brief argued, "[r]egardless whether particular instances of fraud are well documented."

Stephen Ansolabehere & Nathaniel Persily, *Vote Fraud in the Eye of the Beholder: The Role of Public Opinion in the Challenge to Voter Identification Requirements* 4–5 (Columbia Law Sch. Pub. Law & Legal Theory Working Paper Grp., Paper No. 08-170, 2008), *available at* http://www.brennancenter.org/sites/default/files/legacy/Democracy/Persily%20Ansolabehere%20attitudes%20study.pdf (citations omitted).

119 *Crawford*, 553 U.S. at 197 (while "Indiana's interest in protecting public confidence 'in the integrity and legitimacy of representative government' . . . .is closely related to the State's interest in preventing voter fraud, public confidence in the integrity of the electoral process [also] has independent significance, because it encourages citizen participation in the democratic process") (citation omitted).

120 *See, e.g.,* Matt A. Barreto et al., *The Disproportionate Impact of Indiana Voter ID Requirements on the Electorate* (Wash. Inst. for the Study of Race and Ethnicity, Working Paper, 2007), *available at* http://depts.washington.edu/uwiser/documents/Indiana_voter.pdf; Matt A. Barreto et al., *Voter ID Requirements and the Disenfranchisement of Latino, Black and Asian Voters* (Sept. 1, 2007) (prepared for presentation at the Am. Political Science Ass'n Annual Conference), *available at* http://faculty.washington.edu/mbarreto/research/Voter_ID_APSA.pdf; Brennan Ctr. for Justice, *Citizens Without Proof: A Survey of Americans' Possession of Documentary Proof of Citizenship and Photo Identification* (2006) [hereinafter *Citizens Without Proof*], *available at* http://www.brennancenter.org/sites/default/files/legacy/d/download_file_39242.pdf; John Pawasarat, Univ. of Wisc.-Milwaukee Employment and Training Institute, *The Driver License Status of the Voting Age Population in Wisconsin* (2005), *available at* https://www4.uwm.edu/eti/barriers/DriversLicense.pdf.

121 *Citizens Without Proof*, *supra* note 120, at 3.

122 Shaila Dewan, *In Georgia, Thousands March in Support of Voting Rights*, N.Y. Times (Aug. 7, 2005) http://www.nytimes.com/2005/08/07/national/07march.html?_r=0; Ellen Berry, *Georgia Gov. Signs Voter ID Bill Into Law,* L.A. Times (Apr. 23, 2005) http://articles.latimes.com/2005/apr/23/nation/na-voterid23.

123 Ga. Code Ann. § 21-2-417.

124 *Common Cause of Ga. v. Billups*, 406 F. Supp. 2d 1326, 1376 (N.D. Ga. 2005).

125 Vishal Agraharkar, Wendy Weiser & Adam Skaggs, Brennan Ctr. for Justice, *The Cost of Voter ID Laws: What the Courts Say* 3 (2011), *available at* http://www.brennancenter.org/sites/default/files/legacy/Democracy/Voter%20ID%20Cost%20Memo%20FINAL.pdf.

126 *Common Cause III*, 504 F. Supp. 2d 1333, 1377–80.

127 *Crawford*, 553 U.S. 181.

128 *Id.*

129 From the Indiana Election Division's website:

> Public Law 109-2005 requires Indiana residents to present a government-issued photo ID before casting a ballot at the polls on Election Day.
>
> Your photo ID must meet 4 criteria to be acceptable for voting purposes. It Must:
>
> 1. Display your photo
> 2. Display your name, and the name must conform to your voter registration record . . .
> 3. Display an expiration date and either be current or have expired sometime after the date of the last General Election . . .
> 4. Be issued by the State of Indiana or the U.S. government
>
> In most cases, an Indiana driver license, Indiana photo ID card, Military ID or U.S. Passport is sufficient.
>
> A student ID from an Indiana State school may only be used if it meets all of the 4 criteria specified above. A student ID from a private institution may not be used for voting purposes.

Photo ID Law, Indiana Election Div., www.in.gov/sos/elections/2401.htm (last visited July 30, 2014).The law provides certain exemptions:

> Exemptions do exist for the indigent, those with a religious objection to being photographed, and those living in state-licensed facilities that serve as their precinct's polling place. If you are wishing to claim an exemption from the photo ID requirement based on indigence or a religious objection, you may do so in one of two ways:
>
> 1. Go the polls on Election Day, and cast a provisional ballot. Within 10 days of the election, visit the county election office and affirm that an exemption applies to you.
>
> 2. Vote absentee-in-person at the county election office before Election Day, and while there, affirm that an exemption applies to you.
>
> If you are a resident at a state-licensed facility that serves as your polling place, you may claim the exemption at the polls on Election Day.
>
> If you are unable or unwilling to present photo ID on Election Day, you may cast a provisional ballot. Upon casting a provisional ballot, you have until noon 10 days after the election to follow up with the County Election Board and either provide photo ID or affirm one of the law's exemptions applies to you.
>
> Also, if you qualify to vote absentee-by-mail or absentee-by-traveling board, and you chose to vote as such, you are not required to present photo ID.

Exemptions, Indiana Election Division, http://www.in.gov/sos/elections/2624.htm (last visited July 30, 2014). In *Crawford*, the Court asserted that "the evidence in the record does not provide us with the number of registered voters without photo identi¬fication[.]" *Crawford*, 553 U.S. at 200. Drawing from the district court's determinations, the Supreme Court found that the burden on voters was "limited[.]" *Id.* at 203 (quoting *Burdick v. Takushi*, 504 U.S. 428, 439).

130 *Crawford*, 553 U.S. at 203 (quoting *Burdick*, 504 U.S. at 439).
131 *Id.* at 200.
132 *Id.* at 201.
133 *Id.*
134 *Id.* at 204.
135 *Texas v. Holder*, 888 F. Supp. 2d at 124, *vacated and remanded*, 133 S. Ct. 2886 (2013).
136 Defendants' Motion to Dismiss at 1, *Veasey v. Perry*, No. 2:13–CV–193, 2013 WL 6046807 (S.D. Tex. June 26, 2013). Texas cited *Crawford* repeatedly throughout its Motion to Dismiss.
137 Order on Motions to Dismiss at *14–*15, *Veasey v. Perry*, No. 2:13-CV-193, 2014 WL 3002413 (S.D. Tex. July 2, 2014).
138 *Frank v. Walker*, No. 11-CV-01128, 2014 WL 1775432 at *3, *18, *33 (E.D. Wisc. 2014).
139 *Id.* at 23.
140 *Id.* at 24–38.
141 *Id.* at 33.
142 *Id.* at 8.
143 *Id.* at 8–10.
144 Karyn L. Rotker, Written Testimony, Nat'l Comm'n on Voting Rights, Hearing in Minneapolis, Minnesota 9 (Feb. 25, 2014) (citing Matt A. Barreto, Rates of Possession of Accepted Photo Identification Among Different Subgroups in the Eligible Voter Population, Milwaukee County, Wisconsin, Expert Report Submitted on Behalf of the Plaintiffs in *Frank v. Walker* at 18–19, 34, *Frank v. Walker*, No. 11-CV-01128, 2014 WL 1775432 (Apr. 23, 2012), *available at* https://www.aclu.org/files/assets/062-10-exhibitjexpertreport.pdf).
145 *Id.* at 10.
146 *See* Joshua A. Douglas, *The Right to Vote Under State Constitutions*, 67 Vand. L. Rev. 89, 91, 101–05 (2014).
147 *Weinschenk v. State*, 203 S.W.3d 201, 221–22 (Mo. 2006).
148 Order on Preliminary Injunction at 3, *Kohls v. Martin*, No. 60CV-14-1495 (Ark. Cir. May 23, 2014). According to the ACLU of Arkansas, "as many as 25% of African-Americans in the state lack government issued photo ID, compared to 8% of their white counterparts." *Voter ID Laws Disenfranchise Eligible, Longtime Votes,* Am. Civil Liberties Union of Ark. (2013), www.acluarkansas.org/content/voter-id-bill-in-arkansas-house#.U9fdlPldVp6.
149 *Applewhite v. Commonw. of Pennsylvania*, 617 Pa. 563 (2012).
150 *Id.* at 567 ("PennDOT—apparently for good reason—has refused to allow such liberal access. Instead, the Department continues to vet applicants for Section 1510(b) cards through an identification process that Commonwealth officials appear to acknowledge is a rigorous one.").
151 *Id.* at 569 ("While there is a debate over the number of affected voters, given the substantial overlap between voter rolls and PennDOT's existing ID driver/cardholder database, it is readily understood that a minority of the population is affected by the access issue. Nevertheless, there is little disagreement with Appellants' observation that the population involved includes members of some of the most vulnerable segments of our society (the elderly, disabled members of our community, and the financially disadvantaged).").
152 *Id.* at 570 ("[I]f the Commonwealth Court is not still convinced in its predictive judgment that there will be no voter disenfranchisement arising out of the Commonwealth's implementation of a voter identification requirement for purposes of the upcoming election, that court is obliged to enter a preliminary injunction.") (emphasis added).
153 *Applewhit*e, 2014 WL 184988 at *26–27.
154 *Id.* at *11–*12.
155 *Id.* at *14–*17.
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CHAPTER 7

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APPENDIX A
ABBREVIATIONS

ABBREVIATIONS

AALDEF
Asian American Legal Defense Fund

ACLU
American Civil Liberties Union

DMV
Department of Motor Vehicles

DOJ
Department of Justice

EAC
Election Assistance Commission

Lawyers' Committee
Lawyers' Committee for Civil Rights Under Law

LEP
Limited English Proficiency

MALDEF
Mexican American Legal Defense and Educational Fund

NAACP
National Association for the Advancement of Colored People

NALEO
National Association of Latino Elected Officials

NCVR
National Commission on Voting Rights

NVRA
National Voter Registration Act

SNAP
Supplemental Nutrition Assistance Program

TANF
Temporary Assistance for Needy Families

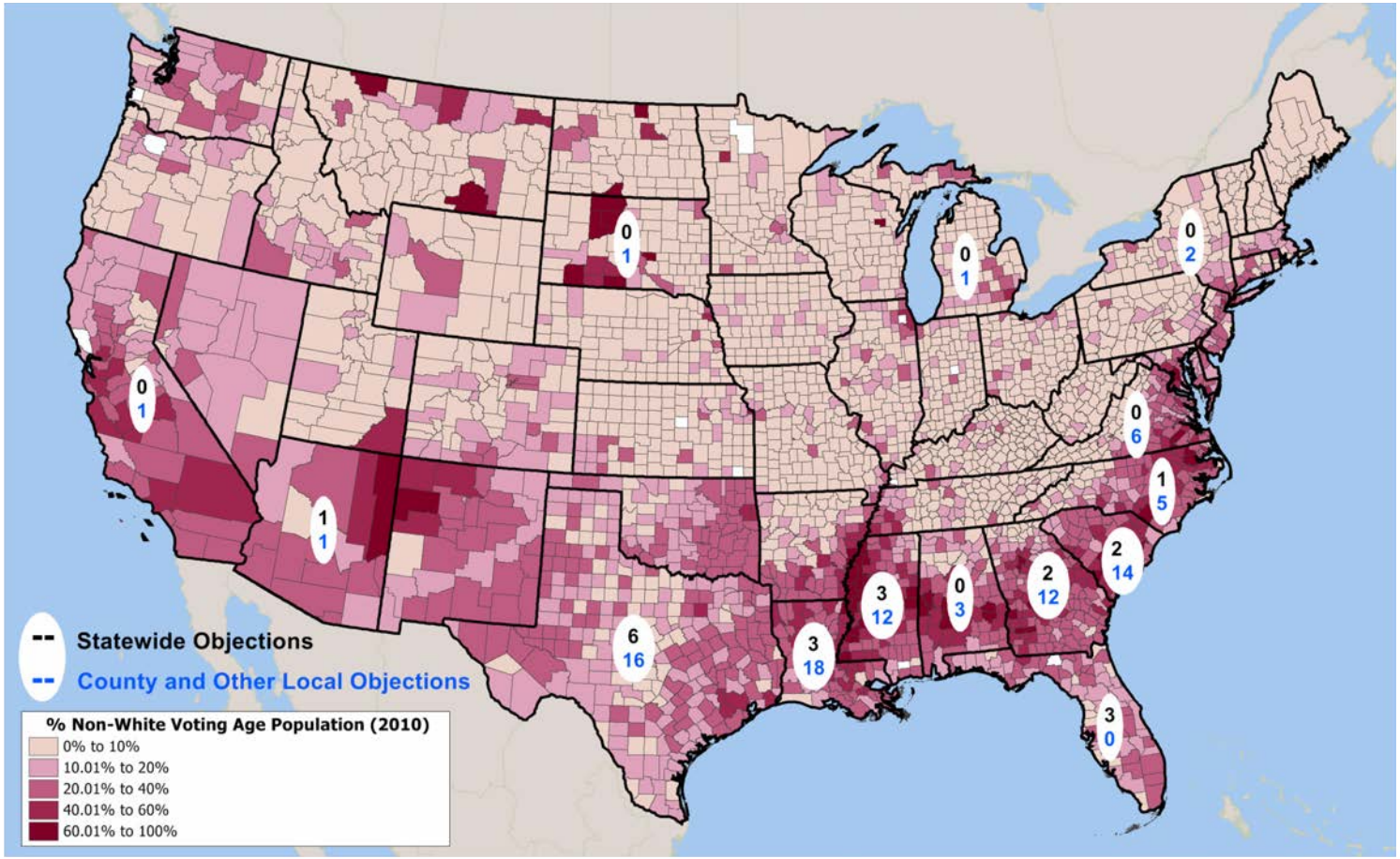
VRA
Voting Rights Act

APPENDIX B
MAPS

Map 1: Preclearance Denials
From 1995 to June 2014

Objections counted by objection letter, and court denials counted by unsuccessful Section 5 declaratory judgement actions. Includes one Section 3 objection in South Dakota. Figures do not include objections withdrawn based upon a subsequent change in law or fact, and an objection where preclearance subsequently was granted by the U.S. District Court for the District of Columbia. There were no denials in Hawaii or Alaska during this period. Data: derived from U.S. Department of Justice records. Cartography: Voting Rights Project, Lawyers' Committee for Civil Rights Under Law.

Map 2: Preclearance Denials
From 1995 to 2013
With Non-White Percentage of Voting Age Population

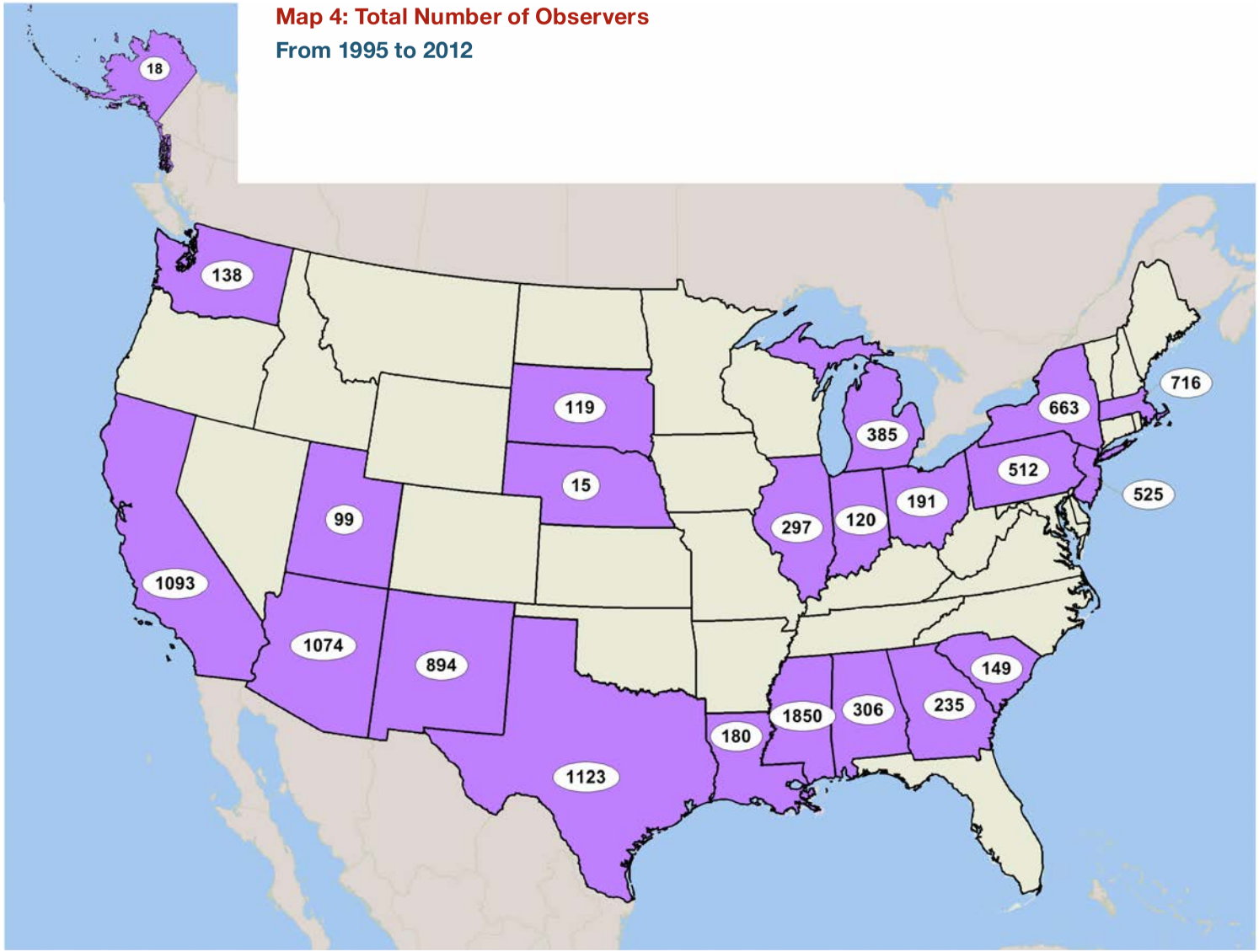


Objections counted by objection letter, and court denials counted by unsuccessful Section 5 declaratory judgement actions. Includes one Section 3 objection in South Dakota. Figures do not include objections withdrawn based upon a subsequent change in law or fact, and an objection where preclearance subsequently was granted by the U.S. District Court of the District of Columbia. There were no denials in Hawaii or Alaska during this period. Data: derived from U.S. Department of Justice records and U.S. Census Bureau, Census 2010 Redistricting Data (PL 94-171) Summary File. Cartography: Voting Rights Project, Lawyers' Committee for Civil Rights Under Law.

Map 3: Jurisdictions with Observer Coverage From 1995 to 2012 With Non-White Percentage of Voting Age Population

There were no observers in Hawaii during this period. Data: U.S. Census Bureau, Census 2010 Redistricting Data (PL 94-171) Summary File and observer data derived from U.S. Department of Justice records. Cartography: Voting Rights Project, Lawyers' Committee for Civil Rights Under Law

Map 4: Total Number of Observers
From 1995 to 2012



There were no observers in Hawaii during this period. Data: Derived from U.S. Department of Justice records. Cartography: Voting Rights Project, Lawyers' Committee for Civil Rights Under Law

Map 5: Successful Section 2 Cases
From 1995 to June 2014

Includes cases in which courts ruled for plaintiffs and litigation settlements; does not include Section 2 cases challenging a failure to provide language assistance.
Data and cartography: Voting Rights Project, Lawyers' Committee for Civil Rights Under Law

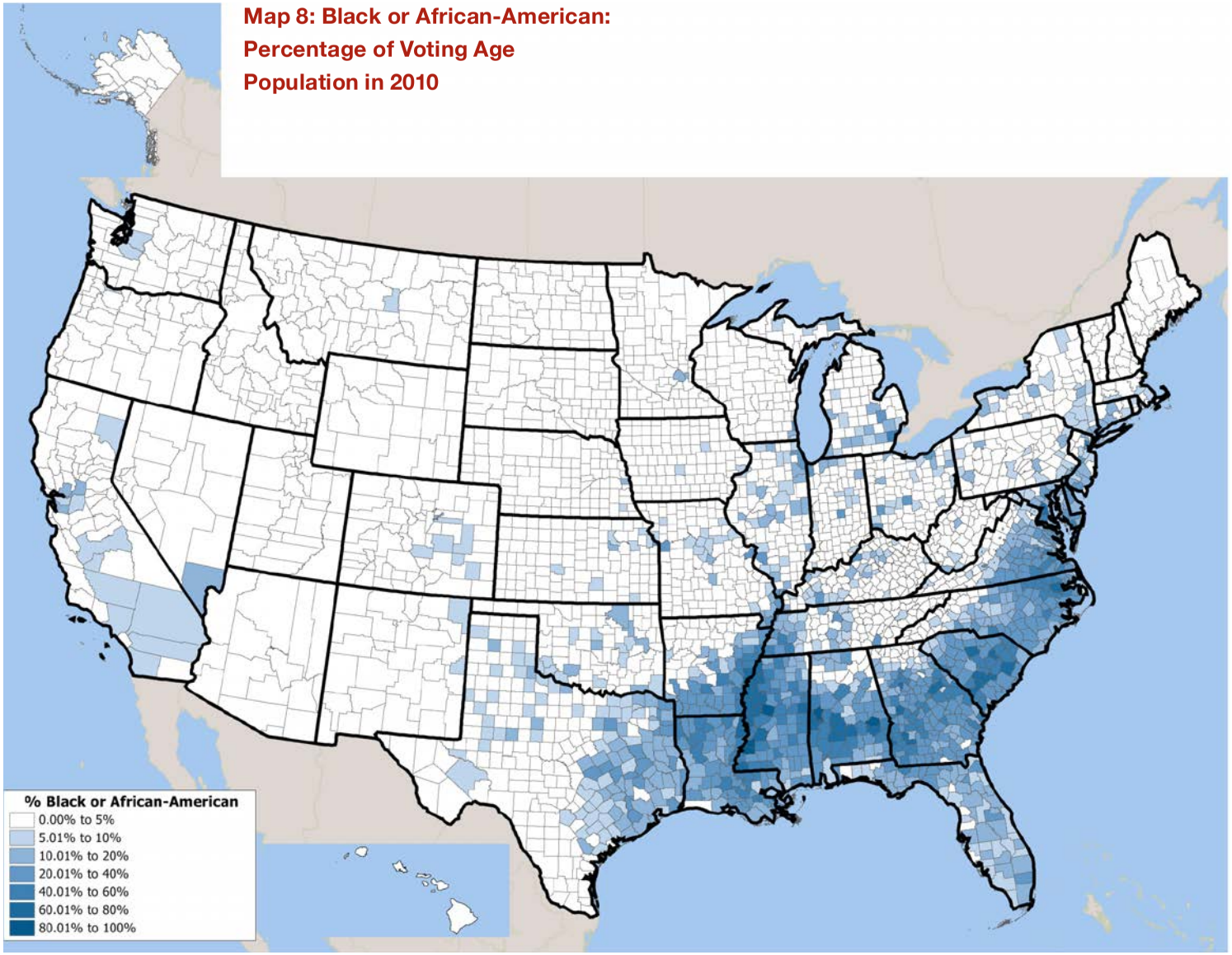
Map 6: Successful Language Assistance Cases From 1995 to June 2014

Includes cases in which courts ruled for plaintiffs, litigation settlements, and non-litigation settlements. Cases filed under Sections 2, 4(e), 4(f)(4), 203, and/or 208 of the Voting Rights Act. Data and cartography: Voting Rights Project, Lawyers' Committee for Civil Rights Under Law

Map 7: 2011 Language Minority Determinations
Section 203 of the Voting Rights Act

*For Alaska, coverage refers to coverage of a borough or census area. Data: U.S. Census Bureau, 2011 Determinations under Section 203. Cartography: Voting Rights Project, Lawyers' Committee for Civil Rights Under Law

Map 8: Black or African-American: Percentage of Voting Age Population in 2010

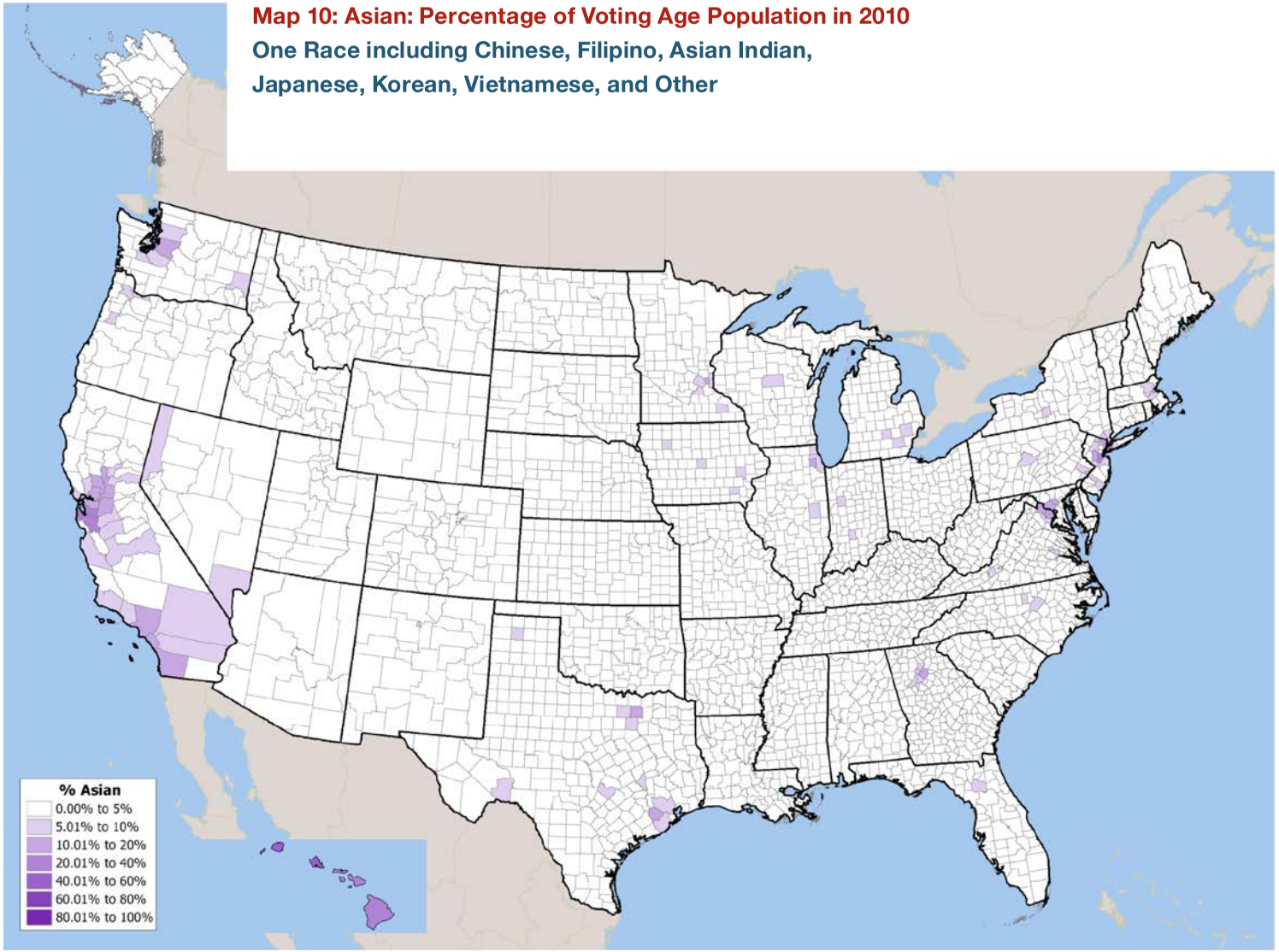


Data: U.S. Census Bureau, Census 2010 Redistricting Data (PL 94-171) Summary File. Cartography: Voting Rights Project, Lawyers' Committee for Civil Rights Under Law

Map 9: American Indian and Alaska Native: Percentage of Voting Age Population in 2010 One Race including Cherokee, Chippewa, Navajo, and Sioux

Data: U.S. Census Bureau, Census 2010 Redistricting Data (PL 94-171) Summary File. Cartography: Voting Rights Project, Lawyers' Committee for Civil Rights Under Law

Map 10: Asian: Percentage of Voting Age Population in 2010
One Race including Chinese, Filipino, Asian Indian, Japanese, Korean, Vietnamese, and Other



Data: U.S. Census Bureau, Census 2010 Redistricting Data (PL 94-171) Summary File. Cartography: Voting Rights Project, Lawyers' Committee for Civil Rights Under Law

Map 11: Hispanic or Latino: Percentage of Voting Age Population in 2010

Data: U.S. Census Bureau, Census 2010 Redistricting Data (PL 94-171) Summary File. Cartography: Voting Rights Project, Lawyers' Committee for Civil Rights Under Law

APPENDIX C
TABLES AND LINE GRAPHS

Table 1: Federal Observers by Election Type and State (1995 – 2012)

	Election Type (Jurisdiction Counts)						
	Federal	State	School District	Municipal	Other	Total Jurisdictions	Total Observers
AK	0	1	0	1	0	2	18
AL	3	16	0	8	0	27	306
AZ	8	33	0	2	0	43	1,074
CA	3	21	0	12	1	37	1,093
GA	4	15	1	2	1	23	235
IL	1	4	0	5	0	10	297
IN	0	0	0	2	0	2	120
LA	0	10	0	3	2	15	180
MA	0	8	0	8	3	19	716
MI	2	5	0	4	2	13	385
MS	18	129	0	18	7	172	1,850
NE	0	2	0	0	0	2	15
NJ	2	13	4	4	1	24	525
NM	17	33	3	0	1	54	894
NY	8	27	2	9	0	46	663
OH	0	6	0	0	0	6	191
PA	0	7	0	2	0	9	512
SC	1	7	0	1	0	9	149
SD	0	10	0	0	0	10	119
TX	4	29	0	18	1	52	1,123
UT	4	1	0	0	0	5	99
WA	0	2	1	0	0	3	138
Total	75	379	11	99	19	583	10,702

Data: Information derived from U.S. Department of Justice records.

Table 2: Federal Observers by Election Type (1995 – 2012)

	Election Type					
	Federal	State	School District	Municipal	Other	Total
Total Jurisdictions	75	379	11	99	19	583
Total Observers	1,235	7,196	173	1,733	365	10,702

Data: Information derived from U.S. Department of Justice records.

Tables 3–5: Limited English Proficiency (LEP) Populations

Top Ten Languages Spoken by Limited English Proficiency Individuals, 2010			
Rank	Language	Number (in thousands)	Share
1	Spanish or Spanish Creole	16,524	65.5
2	Chinese	1,548	6.1
3	Vietnamese	836	3.3
4	Korean	635	2.5
5	Tagalog	489	1.9
6	Russian	416	1.7
7	French Creole	323	1.3
8	Arabic	321	1.3
9	Portuguese or Portuguese Creole	277	1.1
10	African Languages	276	1.1

Data: Migration Policy Institute, National Center on Immigrant Integration Policy, “LEP Data Brief”. Dec. 2011

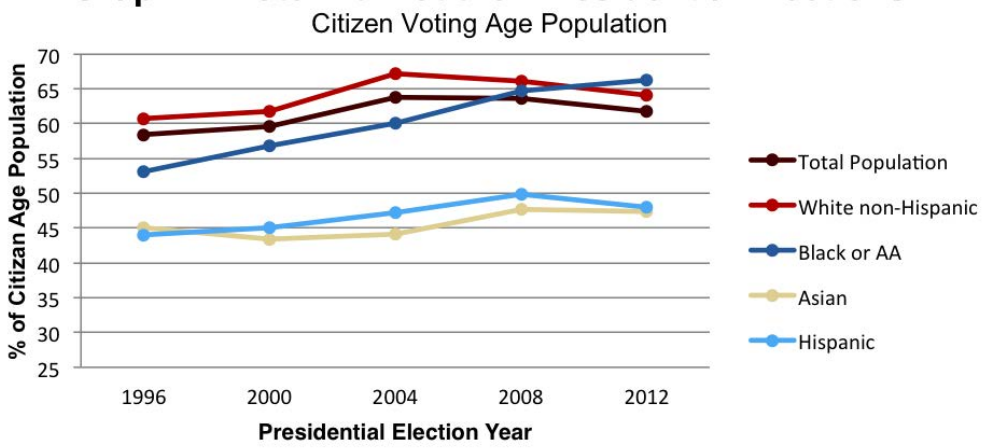
Top States for Number and Share of Limited English Proficiency Residents, 2010			
Rank	**State**	**LEP Population (thousands)**	**Share of Total US LEP Population (percent)**
1	California	6,898	27.3%
2	Texas	3,359	13.3%
3	New York	2,458	9.7%
4	Florida	2,112	8.4%
5	Illinois	1,158	4.6%
6	New Jersey	1,031	4.1%

Data: Migration Policy Institute, National Center on Immigrant Integration Policy, "LEP Data Brief". Dec. 2011

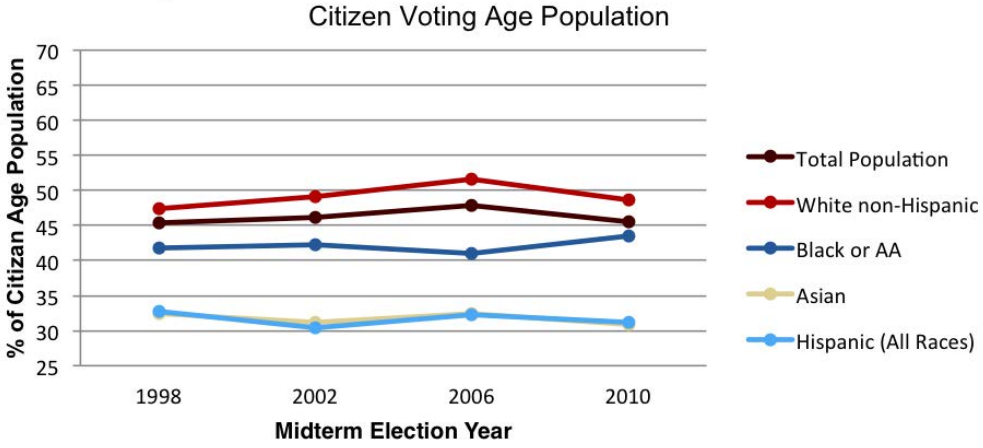
Top Ten States with the Highest Growth in Limited English Proficiency Population, 1990 to 2010				
Rank	**State**	**1990 LEP Population (thousands)**	**2010 LEP Population (thousands)**	**Change from 1990 to 2010 (percent)**
1	Nevada	62	310	398.2
2	North Carolina	87	430	395.2
3	Georgia	109	522	378.8
4	Arkansas	21	88	311.5
5	Tennessee	46	174	281.4
6	Nebraska	22	76	242.2
7	South Carolina	38	127	237.2
8	Utah	41	137	235.2
9	Washington	165	512	209.7
10	Alabama	36	109	202.1
	U.S.	13,983	25,223	80.4

Data: Migration Policy Institute, National Center on Immigrant Integration Policy, "LEP Data Brief". Dec. 2011

Graph 1: Voter Turnout for Presidential Elections



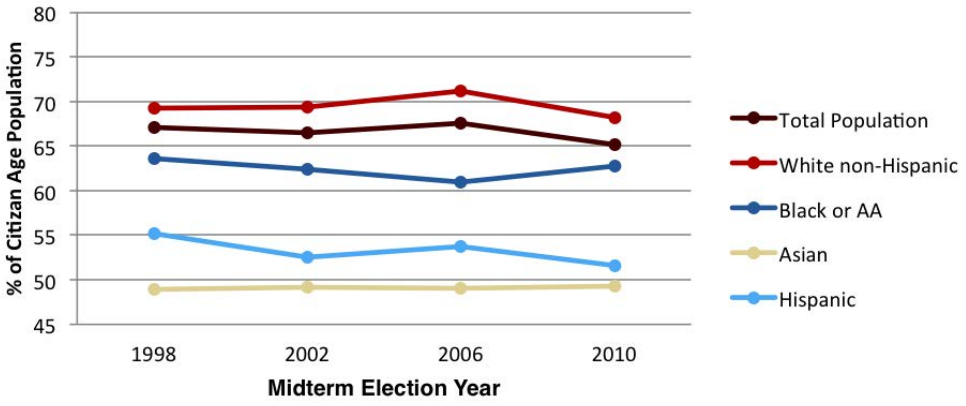
Graph 2: Voter Turnout for Midterm Elections



Data: U.S. Census Bureau, Current Population Survey, November 2012 and ealier reports, Table A-1. Analysis by Voting Rights Project, Lawyers' Committee for Civil Rights Under Law. *Due to changes in the CPS race categories beginning in 2003, 2004-2012 data on race are not directly comparable with data from earlier years.

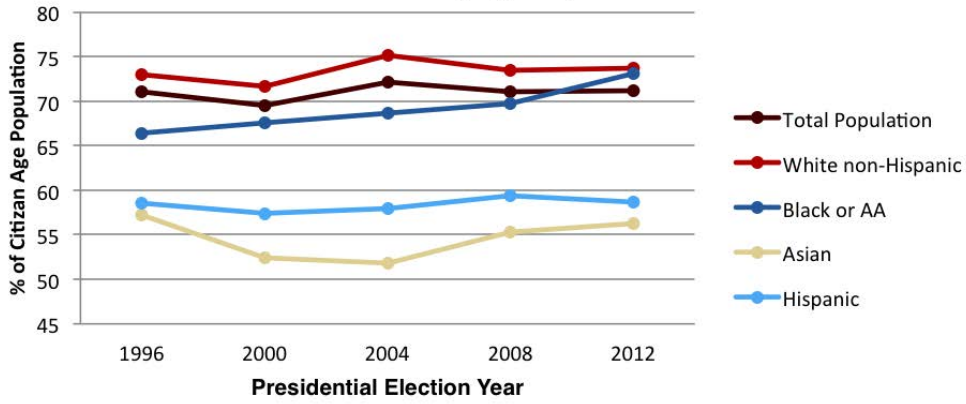
Graph 3: Voter Registration for Midterm Elections

Citizen Voting Age Population



Graph 4: Voter Registration for Presidential Elections

Citizen Voting Age Population



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LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW

PRELIMINARY REPORT ON

Voting Discrimination Against Racial and Ethnic Minorities 1994–2019

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The Lawyers' Committee for Civil Rights Under Law (Lawyers' Committee), a nonpartisan, nonprofit organization, was formed in 1963 at the request of President John F. Kennedy to involve the private bar in providing legal services to address racial discrimination. The principal mission of the Lawyers' Committee is to secure, through the rule of law, equal justice under the law, particularly in the areas of criminal justice, fair housing and fair lending, voting, education, and economic justice. For more information about the Lawyers' Committee, visit **www.lawyerscommittee.org.**

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This is the Preliminary Report of Racial and Ethnic Discrimination in Voting, 1994-2019 prepared by the Lawyers' Committee for Civil Rights Under Law. When completed, this Report will present in a unified package all administrative actions and court proceedings between 1994 and the present, based on claims of voting discrimination by state or local jurisdictions, that resulted in critical protections for protected racial or ethnic groups.

The Lawyers' Committee for Civil Rights Under Law has a unique vantage point from which to analyze this information. Since 1963, when President John F. Kennedy enlisted the private bar's leadership and resources in combating racial discrimination, the Lawyers' Committee has been at the forefront of the battle for equal rights. The Lawyers' Committee created and staffed the National Commission on the Voting Rights Act, which made the largest contribution to the record supporting the 2006 reauthorization of the Voting Rights Act,[1] and participated in the legal defense of the two cases challenging the constitutionality of the reauthorization, *Northwest Austin Municipal Utility District No. 1 v. Holder*[2] and *Shelby County v. Holder*.[3] In 2014, the Lawyers' Committee organized the National Commission on Voting Rights which issued a report documenting ongoing voting discrimination.[4] For almost two decades, the Lawyers' Committee has led Election Protection, the largest and longest-running non-partisan voter protection program in the country. And, to this day, the Lawyers' Committee's docket of significant voting rights litigation is among the most comprehensive and far-reaching—both geographically and in terms of the issues raised—as any in the nation.

This preliminary report identifies approximately 340 instances between 1994 and the present where actions by state or local governments gave rise to either a finding of racial discrimination in voting by the Attorney General or a court, or a change in the jurisdiction's actions as a result of litigation brought claiming racial discrimination in voting. The vast majority involved court cases from all over the country, but with a disproportionate number arising from jurisdictions once covered by Section 5 of the Voting Rights Act. The remainder are objections interposed by the Attorney General pursuant to the then authority under Section 5 of the Voting Rights Act to block or deny proposed changes in voting practices or procedures by jurisdictions formerly covered by Section 5.

The enormous number of findings of discrimination in a relatively small number of years serve as a sobering reminder that our fight for equality in the polling place is yet to be won.

THE PURPOSE OF THIS REPORT

In some ways, this Report is a response — albeit at this stage, preliminarily and partial — to the majority opinion in *Shelby County*, where the Supreme Court gutted Section 5 of the Voting Rights Act, one of the most important and most protective pieces of civil rights legislation in our history. Section 5 required jurisdictions with a history of discrimination, based on a formula set forth in Section 4(b), to obtain preclearance of any voting changes from the Department of Justice or the District Court in the District of Columbia before implementing the voting change. In the *Shelby County* case, the Supreme Court decided in a 5-4 vote that the Section 4(b) coverage formula was unconstitutional.

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1 National Commission on Voting Rights, Protecting Minority Voters: The Voting Rights Act at Work 1982-2005 (Feb. 2006).
2 557 U.S. 193 (2009).
3 570 U.S. 529 (2013).
4 National Commission on Voting Rights, Protecting Minority Voters: Our Work Is Not Done (2014), http://votingrightstoday.org/ncvr/resources/discriminationreport.

The majority in *Shelby County* held that, because the Voting Rights Act "'impose[d] current burdens,'" it "'must be justified by current needs.'"[5] The majority went on to rule that because the formula was comprised of data from the 1960s and 1970s, it could not be rationally related to determining which jurisdictions, if any, should be covered under Section 5 decades later. That Congress had reauthorized Section 5 after holding several hearings, reviewing tens of thousands of pages of records of discrimination, and with a 98-0 vote in the Senate did not appear to faze the majority. Indeed, Chief Justice Roberts, writing for the Court, said that "things have changed dramatically" in the South since passage of the Voting Rights Act in 1965,[6] and that "[b]latantly discriminatory evasions of federal decrees are rare."[7] Unfortunately, as seen by even the partial record compiled in this Report, that is an overly optimistic view of the state of voting rights in this country.

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

In this Report, we take a preliminary look back a quarter of a century to the two decades before *Shelby County* and the six years since. We have tried to identify instances of state or local racial discrimination in voting — anywhere in the country — that rose to a such a level of concern as to lead to a change in the conduct because of action by the Attorney General or in the courts. The Attorney General actions have been easy to identify: objection letters by the Attorney General in response to submissions by jurisdictions then covered by Section 5 of the Voting Rights Act notifying the Attorney General of proposed changes in voting practices or procedures. Those objection letters necessarily stopped the proposed changes from taking effect, and thus resulted in benefit to protected populations in those jurisdictions.

Court action is a little more difficult to categorize. First, it is necessary to discern whether the claim being litigated is a claim of racial discrimination relating to voting rights. Most of the cases listed were brought either under Section 2 or Section 5 of the Voting Rights Act and were therefore, necessarily, race-based discrimination claims. We note that, although

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5 570 U.S. at 536, *quoting Northwest Austin*, 557 U.S. at 203.
6 570 U.S. at 547.
7 570 U.S. at 547, *quoting Northwest Austin*, 557 U.S. at 202.
8 William H. Frey, *The US will become 'minority white' in 2045, Census projects*, The Brookings Institution (Oct. 15, 2019, 1:22 PM), https://www.brookings.edu/blog/the-avenue/2018/03/14/the-us-will-become-minority-white-in-2045-census-projects/.

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

For Section 2 cases, we included both vote denial and vote dilution claims. For Section 5, we included actions seeking to enforce Section 5 of the Voting Rights Act, if filed before submission by the covered jurisdiction of its proposed voting practice change to the Attorney General, if the action succeeded in subjecting the proposed change to Section 5 review, even if the proposed change was ultimately precleared. On the other hand, we did not include Section 5 enforcement actions, if the covered jurisdiction had submitted the proposed change for Section 5 review prior to the filing of the enforcement action, unless the proposed change was ultimately not precleared. Claims for violation of Section 203 of the Voting Rights Act, alleging failure to provide effective language assistance, were categorized as race-based claims.

We also included constitutional claims, typically brought under the Equal Protection Clause, if it was clear that the claim was of racial discrimination in voting. In this context, at least for purposes of this preliminary report, we included cases claiming racial discrimination brought by any racial group. These included, so-called "*Shaw* claims," brought by white plaintiffs, claiming that district lines were the result of racial gerrymandering.[9]

There were many cases brought under other constitutional and statutory doctrines, like First and Fourteenth Amendment "right-to-vote" claims and claims under the National Voter Registration Act, which we did not include, even though the allegations may have included some race-based themes, such as allegations that the challenged state or local conduct affected minority populations, unless the claims specifically included allegations of discrimination and the benefit achieved was connected to the discrimination claim.

Determining whether a benefit had been achieved by the racial group also entailed analysis. We included cases where there was a result, preliminarily or final, that benefited the racial or ethnic group in a way sought by the lawsuit. These included final judgments in favor of plaintiffs on racial discrimination grounds, the issuance of preliminary injunctions in favor of such plaintiffs that provided them with concrete relief, and the resolution of the case by way of Consent Decree or settlement — with or without the acknowledgement of liability — so long as plaintiffs received at least some of the relief the plaintiff had sought. In a few other instances, where it appeared clear that the jurisdiction had changed its conduct — by regulation, legislation or otherwise — in response to the litigation, we included such cases.

It should also be noted that we did not include the many cases that are pending around the country, where neither preliminary nor final relief has been issued yet. Nor did we include voting discrimination cases brought in state court. These cases may be discussed in our Final Report.

We consider these criteria to be conservative in

9 *Shaw v. Reno*, 509 U.S. 630 (1993).

assessing voting discrimination. By not including instances where plaintiffs received relief that inured to the benefit of racial minorities but not based a theory of racial discrimination, we have excluded many cases, including numerous cases brought by the Lawyers' Committee, where we do not file litigation unless it furthers our racial justice mission. In addition, by including only cases and DOJ objections, we have excluded other instances of racial discrimination.

Finally, we emphasize the preliminary nature of this report. When we announced that the Lawyers' Committee would publish a report of this nature, we set an October 2019 deadline, knowing that the information in this report would be of great interest to the public, as Congress is considering legislation to reestablish the protections removed by the decision in *Shelby County*. Because we intended to undertake a survey of cases in all 50 states and the District of Columbia, we enlisted the help of our large *pro bono* network of private firms, who, as they have done since President Kennedy's clarion call in 1963, responded enthusiastically to the task. Undoubtedly, some may quibble with some of the choices made to include or not include certain matters, and we welcome feedback as we proceed with preparation of our final report, which will include not only an updated version of the list identifying each instance of racial discrimination in voting based on data from Section 5 objections and

Voting Rights Violations by State

Jurisdiction	Type of Matter	Date of Interim or Final Resolution	Results	Type of Voting Discrimination ((1) vote dilution; (2) language assistance; (3) identification requirements; (4) other barriers to voter registration; (5) problems at the polls; (6) polling place locations; (7) early or absentee voting; and/or (8) other)	Reference
ALABAMA					
Statewide	Section 5 objection letter	1994	Attorney General Objection	vote denial	Section 5 objection letter, James P. Turner to Lynda K. Oswald (Jan. 31, 1994) (Alabama)
Statewide	case/litigation	2006	Preliminary Injunction	vote denial	United States v. State of Alabama, 2:2006cv00225 (2006)
Statewide	case/litigation	2015	Final Order	racial gerrymandering	Alabama Legislative Black Caucus v. State of Alabama, 2:2012cv00691 (2017); Alabama Legislative Black Caucus v. Alabama, 231 F. Supp. 3d 1026 (M.D. Al. 2017)
Etowah County	case/litigation	1994	Final Order	vote dilution	Presley v. Etowah Cty. Comm'n, 869 F. Supp. 1555 (M.D. Ala. 1994)
City of Greensboro in Hale County	Section 5 objection letter	1994	Attorney General Objection	vote dilution	Section 5 objection letter, James P. Turner to Nicholas H. Cobbs, Jr. (Jan. 3, 1994) (Alabama)
City of Foley	case/litigation	1995	Consent Decree	vote dilution	Dillard v. City of Foley, 926 F. Supp. 1053, 1059 (M.D. Ala. 1995)
Tallapoosa County	Section 5 objection letter	1998	Attorney General Objection	vote dilution	Section 5 objection letter, Bill Lann Lee to E. Paul Jones (Feb. 6, 1998) (Alabama)
Dallas County Commission	case/litigation	2000	Final Order	vote dilution	Wilson v. Minor, 220 F.3d 1297 (11th Cir. 2000)
City of Alabaster	Section 5 objection letter	2000	Attorney General Objection	vote dilution	Section 5 objection letter, Bill Lann Lee to J. Frank Head (Aug. 16, 2000) (Alabama)

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City of Calera	Section 5 objection letter	2008	Attorney General Objection	vote dilution	Section 5 objection letter, Grace Chung Becker to Dan Head (Aug. 25, 2008) (Alabama)
Montgomery City	case/litigation	2008	Consent Decree	vote denial	May et al v. City of Montgomery, 2:2007cv00738 (2010)
City of Evergreen	case/litigation	2013	Final Order	vote dilution	Allen v. City of Evergreen, Ala., No. CIV.A. 13-107-CG-M, Document 32, filed 2/2/2013
ALASKA					
Bethel	case/litigation	2009	Preliminary Injunction/ Settlement Agreement	language assistance	Nick v. Bethel, No. 3:07-CV-0098 (TMB) (D. Ak. July 9, 2009).
Dillingham, Yukon-Koyukuk, and Wade Hampton Census Areas	case/litigation	2015	Settlement Agreement	language assistance	Toyukak v. Mallott, No. 3:13-cv-00137 (D. Ak. Sept. 30, 2015).
ARIZONA					
Statewide	case/litigation	2002	Final Order	vote dilution	Navajo Nation v. Arizona Indep. Redistricting Comm'n, 230 F. Supp. 2d 998, 1016 (D. Ariz. 2002)
Statewide	case/litigation	2018	Consent Decree	other barriers to voter registration	League of United Latin American Citizens Arizona v. Reagan, No. CV17-4102 PHX DGC, 2018 WL 5983009 (D. Ariz. Nov. 14, 2018)
Statewide	case/litigation	2019	Settlement Agreement	early or absentee voting, language assistance.	Navajo Nation v. Hobbs, No. CV-18-08329-PCT-DWL (D. Ariz. 2019)
Coconino County	Section 5 objection letter	1994	Attorney General Objection	vote dilution	Section 5 objection letter, Deval L. Patrick to Terence C. Hance (April 8, 1994) (Arizona)

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Navajo County	Section 5 objection letter	1994	Attorney General Objection	vote dilution	Section 5 objetion letter, Deval L. Patrick to D. Rand Henderson (May 16, 1994) (Arizona)
Coconino Association for Vocations, Industry, and Technology	Section 5 objection letter	2003	Attorney General Objection	vote dilution	Section 5 objection letter, Ralph F. Boyd, Jr. to Jean E. Wilcox (February 4, 2003) (Arizona)
Cochise County	case/litigation	2006	Consent Decree	language assistance	US v. Cochise County, case no. cv 06-304 TUC-FRZ (D. Ariz. 2006)
ARKANSAS					
City of Texarkana	case/litigation	1994	Final Order	vote dilution	Williams v. City of Texarkana, Ark., 32 F.3d 1265 (1994) and Williams v. City of Texarkana, Arkansas, 861 F. Supp. 756, 758 (W.D. Ark. 1992)
Blytheville	case/litigation	1995	Final Order	vote dilution	Harvell v. Blytheville Sch. Dist. No. 5, 71 F.3d 1382(8th Cir. 1995) (en banc)
Crittenden County	case/litigation	2000	Final Order	problems at the polls	Taylor, et. al. v. Howe, et. al., No. 99-2282EA (8th Cir.)
Chicot County	case/litigation	2003	Final Order		Cox, et al v. Donaldson, et al., Case no. 5:02-cv-00319-GH (E.D. Ar.)
Phillips County	case/litigation	2007	Dismissed after alleged violation addressed	problems at the polls	Nichols v. Phillips Cty Election Commission, Case No. 2:06-cv-00158-SWW (E.D. Ar.)

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CALIFORNIA					
Statewide	case/litigation	2001	Consent Decree	vote denial	Common Cause v. Jones, 2002 WL 1766436 (C.D. Cal. Feb. 19, 2002)
Alameda County	case/litigation	1996	Settlement Agreement	language assistance	United States v. Alameda County, No. 95-1266 (N.D. Cal. 1996)
Los Angeles	case/litigation	1997	Final Order	vote dilution	Garcia v. Los Angeles, 96-cv-7661 (C.D.Cal. 1997)
Monterey County	case/litigation	1999	Final Order	vote dilution	Lopez v. Monterey County, 871 F. Supp. 1254 (N.D. Cal. 1994), rev'd and remanded, 519 U.S. 9 (1996), appeal after remand, 525 U.S. 266 (1999)
Upper San Gabriel Valley Municipal Water District	case/litigation	2001	Dismissed after alleged violation addressed	vote dilution	United States v. Upper San Gabriel Valley Municipal Water District, cv-07903-AHM-BQR (C.D. Cal. 2001)
City of Santa Paula	case/litigation	2001	Settlement Agreement	vote dilution	United States v. City of Santa Paula, 00-cv-03691 GHK (SHx) (C.D.Cal. 2001)
Monterey County	Section 5 objection letter	2002	Attorney General Objection	vote dilution	Section 5 objection letter, Ralph F. Boyd, Jr. to Willim D. Barr (March 29, 2002) (California)
San Diego County	case/litigation	2004	Settlement Agreement	language assistance	U.S. v. San Diego, 04-cv-1273 IEG (JMA) (S.D. Cal. 2004)
Ventura County	case/litigation	2004	Consent Decree	language assistance	U.S. v. Ventura County, 04-cv-6443 CAS (VBKx) (C.D.Cal. 2004)
San Benito County	case/litigation	2004	Consent Decree	language assistance, problems at the polls	U.S. v. San Benito County, 04-cv-02056 JW (N.D. Cal. 2004)

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City of Paramount	case/litigation	2005	Consent Decree	language assistance	U.S. v. City of Paramount, 05-cv-05132 AHM (JTLx) (C.D.Cal. 2005)
City of Azusa	case/litigation	2005	Consent Decree	language assistance	United States v. City of Azusa, 05-cv-5147 GAF (SSx) (C.D.Cal. 2005)
City of Rosemead	case/litigation	2005	Consent Decree	language assistance	U.S. v. City of Rosemead, 05-cv-5131 GAF (MANx) (C.D.Cal. 2005)
City of Walnut, Los Angeles	case/litigation	2007	Consent Decree	language assistance	United States v. City of Walnut, 07-cv-2437 PA-SJO-MMS (VBKx) (C.D.Cal. 2007)
Riverside County	case/litigation	2010	Settlement Agreement	language assistance	U.S. v. City of Riverside, 10-cv-01059 SJD (OPx) (C.D.Cal. 2010)
Alameda County	case/litigation	2011	Consent Decree	language assistance	U.S. v. Alameda County, 11-cv-3262 EMC-MMS-RS NDCA (. 2011)
Napa County	Attorney General Letter	2016	Settlement Agreement	language assistance	Napa County Memorandum of Agreement
Kern County	case/litigation	2018	Final Order	vote dilution	Luna v. County of Kern, 291 F.Supp.3d 1088 (E.D. Ca. 2018)
COLORADO					
Statewide	case/litigation	1996	Final Order	vote dilution	Sanchez v. State of Colo., 97 F.3d 1303 (10th Cir.).
Montezuma-Cortez School District No. RE-1	case/litigation	1998	Final Order	vote dilution	Cuthair v. Montezuma-Cortez, Colorado School Dist. No. RE-1, 7 F.Supp.2d 1152 (D. Colo. 1998).

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CONNECTICUT					
City of Bridgeport	case/litigation	1995	Final Order	vote dilution	Bridgeport Coalition for Fair Representation v. City of Bridgeport, Civ. No. 93-1476 (D. Conn.).
FLORIDA					
Statewide	case/litigation	1994	Final Order	racial gerrymandering	Johnson v. Smith, Case No. 94-40025-WS, 1994 U.S. Dist. Lexis 20765, (N.D. Fl. Sept. 2, 1994)(denying PI motion); later proceedings, sub-nom, Johnson v. Mortham, 926 F.Supp. 1460 (N.D.Fla.,1996)(order granting plaintiffs' MSJ).
Statewide	case/litigation	2002	Settlement Agreement	barriers to registration; problems at the polls	NAACP v. Secretary of State, No. 01-120 (S.D. Fla. 2002)
Statewide	case/litigation	2002	Dismissed after alleged violation addressed	barriers to registration	Major v. Sawyer, No. 01-10088 (S.D. Fla. 2002)
Statewide	case/litigation	2012	Dismissed after alleged violation addressed	barriers to registration	League of Women Voters of Fla., Inc. v. Detzner, Case No. 11-cv-00628 (Aug. 30, 2012, N.D. Fla. 2012)
Statewide	case/litigation	2012	Dismissed after alleged violation addressed	barriers to registration	Mi Familia Vota Education Fund, et al v. Detzner, 8:12-cv-01294-JDW-MAP (M.D.Fla. 201
Statewide	case/litigation	2012	Final Order	early voting	Florida v. United States, 885 F. Supp. 2d 299 (D.D.C. 2012)
Statewide	case/litigation	2011	Dismissed after alleged violation addressed	early voting	The League of Women Voters of Florida, et al v. Rick Scott, et al, No. 11-cv-10006 (S.D. Fla. 2011)

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Statewide	case/litigation	2019	Preliminary Injunction	language assistance	Marta Valentine Rivera Madera, et al., v. Laurel Lee, Florida Secretary of State, et al., Case No. 18-00152, (May 10, 2019, N.D. Fla.)
City of Miami	case/litigation	1997	Dismissed after alleged violation addressed	vote dilution	PULSE v. City of Miami, No. 96-cv-3327 (S.D. Fla. 1997)
Ashcroft	case/litigation	2002	Attorney General Objection	vote dilution; barriers to registration	Section 5 objection letter, Ralph F. Boyd Jr. to John M. McKay (July 1, 2002) (Florida)
Dade County	case/litigation	2002	Dismissed after alleged violation addressed	vote dilution	Packingham v. Dade County, No. 96-cv-1749 (S.D.Fla. 2002)
Orange County	case/itigation	2002	Consent Decree	langauge assistance; problems at the polls	United States v. Orange County Florida; 6:02-cv-00737-ACC (M.D.Fla.)
Osceola County	case/litigation	2002	Final Order	language assistance, problems at the polls	United States v. Osceola County Florida; 6:02-cv-00738-ACC (M.D.Fla.)
Miami-Dade County	case/litigation	2002	Consent Decree	Lanugage assistance; problems at the polls	United States v. Miami-Dade County Florida; 1:02-cv-21698 (S.D. Fla 2002)
Volusia County	case/litigation	2004	Dismissed after alleged violation addressed	Polling place locations, Early voting	NAACP et al v. Lowe; 6:04-cv-01469-GKS-KRS (M.D.Fla.)
Osceola County	case/litigation	2006	Final Order	vote dilution	United States v. Osceola County Florida; 6:05-cv-01053-GAP-DAB (M.D.Fla. 2006)
Osceola County	case/litigation	2008	Consent Decree	vote dilution	United States v. School Board of Osceola County Florida; 6:08-cv-00582-GAP-DAB (M.D.Fla. 2008)

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Town of Lake Park	case/litigation	2009	Consent Decree	vote dilution	United States v. Town of Lake Park, Florida, No. 09-cv-80507 (S.D. Fla. Oct. 26, 2009)
Volusia County	case/litigation	2010	Settlement Agreement	language assistance, problems at the polls	Perez-Santiago v. Volusia County Department of Elections, 6:08-cv-1868-JA-KRS (M.D.Fla 2008)
GEORGIA					
Statewide	case/litigation	2008	Dismissed after alleged violation addressed	identification requirements; other barriers to voter registration	Morales v. Handel, United States District Court for the Northern District Court of Georgia Case No.: 1:08-cv-03172
Statewide	Section 5 objection letter	2009	Attorney General Objection	identification requirements; other barriers to voter registration	Section 5 objection letter, Loretta King to Thurbert E. Baker (May 29, 2009) (Georgia)
Statewide	Section 5 objection letter	2012	Attorney General Objection	vote dilution	Section 5 Objection letter, Thomas E. Perez to Dennis R. Dunn (December 21, 2012) (Georgia)
Statewide	case/litigation	2017	Settlement Agreement	other barriers to voter registration	Georgia State Conference of the NAACP v. Kemp; No. 2:16-cv-219 (N.D. Ga.)
Statewide	case/litigation	2018	Preliminary Injunction	identification requirements; other barriers to voter registration	Georgia Coalition for the Peoples' Agenda, Inc. v. Brian Kemp, Case 1:18-cv-04727-ELR
Randolph County	case/litigation; Section 5 objection letter	2006	Final Order; Attorney General Objection	barriers to voter registration	Jenkins v. Ray, No. 4:06-CV-43, 2006 WL 1582426 (M.D. Ga. June 5, 2006); Section 5 objection letter, Wan J. Kim to Tommy Coleman (September 12, 2006) (Georgia)

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Lowndes County	Section 5 objection letter	2009	Attorney General Objection	vote dilution	Section 5 objection letter, Thomas E. Perez to Walter G. Elliott (November 30, 2009) (Georgia)
Greene County	Section 5 objection letter	2012	Attorney General Objection	vote dilution	Section 5 objection letter, Thomas E. Perez to Michael S. Greene & Cory O. Kirby (April 13, 2012) (Georgia)
Long County	Section 5 objection letter	2012	Attorney General Objection	vote dilution	Section 5 objection letter, Thomas E. Perez to Andrew S. Johnson & B. Jay Swindell (August 27, 2012) (Georgia)
Fayette County	case/litigation	2015	Consent Decree	vote dilution	Georgia State Conference of the NAACP v. Fayette Cnty. Bd. of Comm'rs, 118 F.Supp 3d 1338 (N.D. Ga. 2015)
Emanuel County	case/litigation	2016	Settlement Agreement	vote dilution	Georgia State Conference of the NAACP v. Emmanuel Cnty. Bd. Of Comm'rs; No. 6:16-CV-21 (S.D. Ga.)
Hancock County	case/litigation	2016	Consent Decree	other barriers to voter registration	Georgia State Conference of the NAACP v. Hancock Cnty. Bd. of Elections & Registration; No. 5:15-cv-414 (M.D. Ga.)
HAWAII					
Statewide	case/litigation	2000	Final Order	identification requirements	Rice v. Cayetano, 941 F.Supp. 1529 (1999) ; Rice v. Cayetano, 528 U.S. 495 (2000)
Statewide	case/litigation	2002	Final Order	Identification requirement	Arakaki v. State of Hawaii, 314 F. 3d 1091 (9th Cir 2002)

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ILLINOIS					
City of Chicago Heights	case/litigation	1993	Final Order	vote dilution	Harper v. City of Chicago Heights, 223 F.3d 593 (7th Cir. 2000)
City of Chicago	case/litigation	1998	Final Order	vote dilution	Barnett v. City of Chicago, 17 F. Supp. 2d 753, 759 (N.D. Ill. 1998)
Lake County	case/litigation	2001	Settlement Agreement	vote dilution	Vazquez v. Lake County, Case No. 1:01-cv-06541 (N.D. Il. Aug. 22, 2001)
Chicago Board of Elections	case/litigation	2003	Settlement Agreement	vote dilution; problems at the polls	Black et al. v. McGuffage et al., Case No. 1:01-cv-00208 (N.D. Il. Jan. 11, 2001)
Kane County	case/litigation	2007	Settlement Agreement	language assistance	USA v. County of Kane, et al, 07-cv-5451 (ND Ill. Sept. 26, 2007)
St. Clair County	case/litigation	2009	Settlement Agreement	barriers to registration	Chatman et al v. Delaney et al, Case No. 3:09-cv-00259-CJP (S.D. Il. April 3, 2009)
KANSAS					
Ford County	case/litigation	2018	Dismissed after violation addressed	polling place locations	League of United Latin America Citizens, Kansas, Rangel-Lopez v. Cox, No. 2:18-cv-02572 (D. Kan. Oct. 26, 2018)

Jurisdiction	Type of Matter	Date of Interim or Final Resolution	Results	Type of Voting Discrimination ((1) vote dilution; (2) language assistance; (3) identification requirements; (4) other barriers to voter registration; (5) problems at the polls; (6) polling place locations; (7) early or absentee voting; and/or (8) other)	Reference
KENTUCKY					
Statewide	case/litigation	2013	Final Order	vote dilution	Brown v. Kentucky Legislative Research Comm'n, 966 F. Supp. 2d 709, 718 (E.D. Ky. 2013), judgment entered, No. CV13CV25DJBGFVTWOB, 2013 WL 12320875 (E.D. Ky. Oct. 31, 2013). Herbert v. Kentucky State Board of Elections, Case No. 3:13-cv-00025 (E.D. Ky. 2013) (consolidated with Brown)
LOUISIANA					
Statewide	case/litigation	1996	Final Order	vote dilution	Hays v. Louisiana, 936 F. Supp. 360, 365 (W.D. La. 1996)
Statewide	Section 5 objection letter	1996	Attorney General Objection	dismissed after violation addressed	Section 5 objection letter, Deval L. Patrick, to E. Kay Kirkpatrick, (Aug. 12, 1996) (Louisiana)
Statewide	Section 5 objection letter	1998	Attorney General Objection	other barriers to voter registration	Section 5 objection letter, Bill Lann Lee to Angie Rogers LaPlace (Jan. 13 1998) (Louisiana)
Statewide	Section 5 objection letter	2003	Settlement Agreement	vote dilution	House of Representatives v. Ashcroft, No. 1:02-CV-00062 (D.D.C. May 20, 2003)
Statewide	case/litigation	2005	Settlement Agreement	early or absentee voting	Wallace v. Chertoff, No. 2:05-CV-05519 (E.D. La. 2005)
Statewide	case/litigation	2016	Dismissed after Violation Addressed	identification requirements; other barriers to voter registration	VAYLA New Orleans v Schedler, No. 3:16-CV-00305 (M.D. La. 2016)
Veron Parish School Board	case/litigation	1994	Final Order	vote dilution	Dye v. McKeithen, 856 F. Supp. 303 (W.D. La. 1994)

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City of Shreveport	case/litigation	1997	Final Order	vote dilution	United States v. Louisiana, 952 F. Supp. 1151 (W.D. La. 1997)
City of Morgan City	case/litigation	2001	Settlement Agreement	vote dilution	United States of America v. Morgan City, No. 6:00-CV-01541 (W.D. La. 2001)
St. Bernard Parish	case/litigation	2002	Final Order	vote dilution	St. Bernard Citizens for Better Government v. St. Bernard Parish Sch. Bd., No. 02-2209, 2002 U.S. Dist. LEXIS 16540 (E.D. La. Aug. 28, 2002)
Ouachita Parish	case/litigation	2002	Preliminary Injunction	vote dilution	Young & Golsby v. Ouachita Parish School Board, No. 3:02-CV-1644 (W.D. 2002)
Pointe Coupee Parish	Section 5 objection letter	2002	Attorney General Objection	vote dilution	Section 5 objection letter from Ralph F. Boyd, Jr. to Gregory B. Grimes (Oct. 4, 2002) (Louisiana)
DeSoto Parish	Section 5 objection letter	2002	Attorney General Objection	vote dilution; other barriers to voter registration	Section 5 objection letter, Andrew E. Lelling to Walter Lee, (Dec. 31, 2002) (Louisiana)
Richmond Parish	Section 5 objection letter	2003	Attorney General Objection	vote dilution; other barriers to voter registration	Ralph F. Boyd, Jr. to John R. Sartin (May 13, 2003) (Louisiana)
Jefferson Parish	case/litigation	2003	Consent Decree	vote dilution	Jefferson Citizens for Better Government v. Parish of Jefferson, No. 2:03-CV-00345, 2003 WL 1595167 (E.D. 2003)
St. John the Baptist Parish City Council and School Board	case/litigation	2003	Consent Decree	vote dilution	Sorapuru v. Mitchell, No. 2:02-CV-02524 (E.D. La. 2003)

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City of Baton Rouge	case/litigation	2004	Settlement Agreement	vote dilution	Glasper v. Baton Rouge, No. 3:93-CV-00537 (M.D. La. 2004)
Tangipahoa Parish	case/litigation, Section 5 objection letter	2004	Dismissed after alleged violation addressed	vote dilution	Tangipahoa Citizens v. Tangipahoa Parish, No. 2:03-CV-02710, 2004 WL 1638106 (E.D. La. 2004) Section 5 objection letter, R. Alexander Acosta to Carlos Natarino (October 16. 2003) (Louisiana)
St. Landry Parish	case/litigation	2005	Settlement Agreement	vote dilution	NAACP v. St. Landry Parish, No. 6:03-CV-00610 (W.D. La. 2005)
Avoyelles Parish School Board	case/litigation	2006	Settlement Agreement	vote dilution	Guillory v. Avoyelles Parish School Board, No. 1:03-CV-00285, 2011 WL 499196 (W.D. La. 2006)
Jefferson Parish	case/litigation	2007	Consent Decree	vote dilution	Williams v McKeithen, No. 2:05-CV-01180, 2007 WL 9676892 (E.D. La. 2007)
City of St. Martinville	case/litigation	2011	Dismissed after alleged violation addressed	vote dilution; vote denial	Greig v. St. Martinville & United States of America, No.6:00-CV-00603 (W.D. La. 2000)
Terrebonne Parish	case/litigation	2017	Final Order	vote dilution	Terrebonne Parish Branch NAACP v. Jindal, 274 F. Supp. 3d 395 (M.D. La. 2017)

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MARYLAND					
Statewide	case / litigation	1994	Final Order	vote dilution	Marylanders for Fair Representation, Inc. v. Schaefer, 849 F. Supp. 1022 (D. Md. 1994)
Worcester County	case / litigation	1994	Final Order	vote dilution	Cane v. Worcester Cty., Md., 840 F. Supp. 1081 (D. Md. 1994).
MASSACHUSETTS					
Statewide	case/litigation	2004	Preliminary Injunction	vote dilution	Black Political Task Force v. Galvin, 300 F. Supp. 2d 291, 2004 U.S. Dist. LEXIS 2681
City of Lawrence	case/litigation	2001	Preliminary Injunction	identification requirements	Morris, et al v. City of Lawrence, et al
City of Lawrence	case/litigation	2002	Consent Decree	vote dilution	USA v. City of Lawrence, MA, et al
City of Boston	case/litigation	2005	Dismissed after alleged violation addressed	language assistance; problems at the polls	United States of America v. City of Boston, Massachusetts et al
City of Lawrence	case/litigation	2006	Dismissed after alleged violation addressed	language assistance; problems at the polls	OISTE Inc. et al v. City of Lawrence, Massachusetts et al 1:05-cv-12218
City of Springfield	case/litigation	2007	Settlement Agreement	vote dilution	Arise for Social Justice, et al. v. City of Springfield, et al.
City of Springfield	case/litigation	2008	Settlement Agreement	language assistance; problems at the polls	United States of America v. City of Springfield et al
City of Lowell	case/litigation	2019	Consent Decree	vote dilution	Huot v. City of Lowell, No. 1:17-cv-10895-DLC

Jurisdiction	Type of Matter	Date of Interim or Final Resolution	Results	Type of Voting Discrimination ((1) vote dilution; (2) language assistance; (3) identification requirements; (4) other barriers to voter registration; (5) problems at the polls; (6) polling place locations; (7) early or absentee voting; and/or (8) other)	Reference
MICHIGAN					
City of Hamtramck	case	1999	Consent Decree	language assistance, identification requirements, problems at polls	United States v. City of Hamtramck, no. 00-73541 (E.D. Mich. Aug. 7, 2000; Sep. 3, 2003; Jan 29, 2004)
City of Eastpointe	case/litigation	2019	Consent Decree	vote dilution	United States v. City of Eastpointe, No. 417CV10079TGBDRG, 2019 WL 2647355, at *2 (E.D. Mich. June 26, 2019)
MINNESOTA					
Statewide	case/litigation	2005	Preliminary Injunction; Dismissed after alleged violation addressed	identification requirements and other barriers to voter registration	American Civil Liberties Union of Minnesota et al v. Kiffmeyer, Case No. 00:2004cv04653
MISSISSIPPI					
Statewide	Section 5 objection letter	1995	Attorney General Objection	other - denial of office	Section 5 objection letter, Deval L. Patrick to Sandra Murphy Shelson (February 6, 1995) (Mississippi)
Statewide	Section 5 objection letter; case/litigation	1997	Attorney General Objection; Final Order	dual registration	Section 5 objection letter, Isabelle Katz Pinzler to Sandra M. Shelson (September 22, 1997) (Mississippi); Young v. Fordice, 520 U.S. 273 (1997)
Statewide	Section 5 objection letter	2010	Attorney General Objection	vote dilution	Section 5 objection letter, Thomas E. Perez to Margarette L. Meeks (March 24, 2010) (Mississippi)
Statewide	case/litigation	2019	Final Order	vote dilution	Thomas v. Bryant, 939 F. 3d 134 (5th Cir. 2019) reh'g granted, 939 F. 3d. 629 (5th Cir. 2019)
Clarke County	Section 5 objection letter	1994	Attorney General Objection	vote dilution	Section 5 objection letter, James P. Turner to Gilford F. Dabbs, III (January 10, 1994) (Mississippi)

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Carroll County	Section 5 objection letter	1994	Attorney General Objection	vote dilution	Section 5 objection letter, Deval L. Patrick to Kenneth E. Downs (April 18, 1994) (Mississippi)
Quitman (Clarke County)	Section 5 objection letter	1994	Attorney General Objection	vote dilution	Section 5 objection letter, Deval L. Patrick to Hubbart T, Saunders, IV (December 19, 1994) (Mississippi)
Adams County	Section 5 objection letter	1995	Attorney General Objection	vote dilution	Section 5 objection letter, Deval L. Patrick to Marion Smith (January 30, 1995) (Mississippi)
Monroe County	Section 5 objection letter	1995	Attorney General Objection	vote dilution	Section 5 objection letter, Deval L. Patrick to Claude A. Chamberlin (March 20, 1995) (Mississippi)
Chickasaw County	Section 5 objection letter	1995	Attorney General Objection	vote dilution	Section 5 objection letter, Isabelle Katz Pinzler to James S. Gore (April 11, 1995) (Mississippi)
Union County	Section 5 objection letter	1995	Attorney General Objection	vote dilution	Section 5 objection letter,Deval L. Patrick to Lester F. Sumner (June 20, 1995) (Mississippi)
Aberdeen (Monroe County)	Section 5 objection letter	1995	Attorney General Objection	vote dilution	Section 5 objection letter, Deval L. Patrick to Jeffrey M. Navarro (December 4, 1995) (Mississippi)
Calhoun County	case/litigation	1996	Final Order	vote dilution	Clark v. Calhoun Cty., Miss., 88 F.3d 1393 (5th Cir. 1996)
Attala County	case/litigation	1996	Final Order	vote dilution	Teague v. Attala Cty., Miss., 92 F.3d 283 (5th Cir. 1996)
Grenada County	Section 5 objection letter	1997	Attorney General Objection	problems at the polls	Section 5 objection letter, Isabelle Katz Pinzler to James McRae Criss (March 3, 1997) (Mississippi)

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Grenada County	Section 5 objection letter	1997	Attorney General Objection	vote dilution	Section 5 objection letter, Bill Lann Lee to T.H. Freeland, IV (August 17, 1998) (Mississippi)
Chickasaw County	case/litigation	1997	Final Order	vote dilution	Gunn v. Chickasaw County, Mississippi, No. CIV.A. 1:92CV142-JAD, 1997 WL 33426761 (N.D. Miss, Oct. 28, 1997)
Lafayette County	case/litigation	1998	Final Order	vote dilution	Houston v. Lafayette Cty., 20 F. Supp. 2d 996 (N.D. Miss. 1998)
Pike County	Section 5 objection letter	1999	Attorney General Objection	polling place locations	Section 5 objection letter, Bill Lann Lee to John H. White, Jr. (June 28, 1999) (Mississippi)
Montgomery County	Section 5 objection letter	2001	Attorney General Objection	denial of voting opportunity	Section 5 objection letter, Ralph F. Boyd, Jr. to Lane Green Lee (December 11, 2001) (Mississippi)
Tupelo	case/litigation	2007	Final Order	vote dilution	Jamison v. Tupelo, Mississippi, 471 F. Supp. 2d 706 (N.D. Miss. 2007)
Noxubee County	case/litigation	2007	Final	vote dilution	United States v. Brown, 494 F. Supp. 2d 440 (S.D. Miss. 2007) aff'd by United States v. Brown, 561 F.3d. 420 (5th Cir. 2009)
Amite County	Section 5 objection letter	2011	Attorney General Objection	vote dilution	Section 5 objection letter, Thomas E. Perez to Tommie S. Cardin (October 4, 2001) (Mississippi)
Adams County	Section 5 objection letter	2012	Attorney General Objection	vote dilution	Section 5 objection letter, Thomas E. Perez to Everett T. Sanders (April 30, 2012) (Mississippi)
Hinds County	Section 5 objection letter	2012	Attorney General Objection	vote dilution	Section 5 objection letter, Thomas E. Perez to Kenneth Dreber and David Wade (December 3, 2012) (Mississippi)

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MISSOURI					
Ferguson-Florissant School District; St. Louis County Board of Election Commissioners	case/litigation	2016	Final Order	vote dilution	Mo. State Conference of NAACP v. Ferguson-Florissant Sch. Dist., 201 F. Supp. 3d 1006 (E.D. Mo. 2016), affirmed, 894 F.3d 924 (8th Cir. 2018), cert. denied sub nom. Ferguson Florissant Sch. Dist. v. Missouri State Conference of N.A.A.C.P., 139 S. Ct. 826, 202 L. Ed. 2d 579 (2019).
MONTANA					
Statewide	case/litigation	2014	Settlement Agreement	polling place locations; early or absentee voting	Wandering Medicine v. Montana Secretary of State, Case No. 1:12-cv-00135-DWM
Blaine County	case/litigation	2001	Final Order	vote dilution	United States v. Blaine Cty., Mont., 157 F. Supp. 2d 1145 (D. Mont. 2001); United States. v. Blaine Cty., Mont., 363 F.3d 897 (9th Cir. 2004), Case No. 4:99-00-00122
Wolf Point School District	case/litigation	2014	Consent Decree	vote dilution	Jackson v. Bd. of Trustees of Wolf Point Sch. Dist., et al., Case No. 4:13-cv-00065-BMM
NEBRASKA					
County of Thurston	case/litigation	1995	Final Order	vote dilution	Stabler v. County of Thurston, No. 8:CV93-00394(D.Neb.Aug.29, 1995), aff'd,129 F.3d 1015 (8th Cir. 1997), cert.denied,523 U.S. 1118 (1998)
Colfax County	case/litigation	2012	Consent Decree	language assistance	US v. Colfax County, 8:12-cv-84 (D.Neb.) Consent Order

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NEVADA					
Washoe and Mineral Counties	case/litigation	2016	Preliminary Injunction	polling place locations; early voting	Sanchez v. Cegavske, 214 F. Supp. 3d 961 (D. Nev. 2016).
NEW MEXICO					
Sandoval County	case/litigation	2011	Consent Decree	language assistance	U.S. v. Sandoval County, NM, 797 F.Supp.2d 1249 (D. New Mexico 2011)
NEW YORK					
Statewide	Section 5 objection letter	1994	Attorney General Objection	vote dilution; barriers to registration	Section 5 objection letter, Loretta King to G. Oliver Koppell (Dec. 5, 1994) (New York)
City of Hinesville	Section 5 objection letter	1991	Attorney General Objection	vote dilution	Section 5 objection letter, John R. Dunne to Judith Reed (Jul 19, 1991) (New York)
Kings and New York Counties in New York City, New York	Section 5 objection letter	1994	Attorney General Objection	language assistance	Section 5 objection letter, Deval L. Patrick to Kathy King (May 13, 1994) (New York)
Bronx County, New York	Section 5 objection letter	1996	Attorney General Objection	vote dilution	Section 5 objection letter, Deval L. Patrick to Judith Kay (Nov. 15, 1996) (New York)
City of New York	case/litigation	1998	Settlement Agreement	language assistance	Chinatown Voter Education Alliance v. Ravitz, Case 1: 06-Civ-00 913-NRB, S.D.N.Y. 2006 (Reice Buchwald, J.).
Town of Hempstead	case/litigation	1999	Final Order	vote dilution	Goosby v. Town Board of the Town of Hempstead, 180 F.3d 476 (2d Cir. 1999)

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City of Rochelle and city council	case/litigation	2003	Final Order	vote dilution	New Rochelle Voter Defense Fund v. city of New Rochelle, 308 F. Supp. 2d 152 (S.D.N.Y 2003)
Albany County	case/litigation	2004	Final Order	vote dilution	Arbor Hill Concerned Citizens Ass'n v. County of Albany, 357 F.2d 260 (2d Cir. 2004)
Suffolk County; Suffolk County Board of Elections	case/litigation	2004	Consent Decree	language assistance	Consent Decree, U.S. v. Suffolk County, Case 2:04-cv-02689-TCP-MLO, June 29, 2004.
Westchester County, New York	case/litigation	2005	Consent Decree	language assistance	US v. Westchester County, et al. 05 Civ 0650 (S.D.N.Y. 2005);
Albany County Board of Elections	case/litigation	2011	Final Order	vote dilution	Anne Pope, et al. v. County of Albany, et al. Case No.: 11-cv-00736 (N.D.N.Y.)
County of Orange	case/litigation	2013	Final Order	vote dilution	Order Adopting Special Master's Legislative Redistricting Plan, Molina v. County of Orange, 13-cv-3018-ER (S.D.N.Y. June 14, 2013)
Orange County Board of Elections	case/litigation	2015	Settlement Agreement	vote dilution; language assistance; other barriers to voter registration; problems at polling places	USA v. Orange County Board of Elections et al.; Case No. 7:12-cv-03071 (S.D.N.Y. 2012)
Village of Port Chester	case/litigation	2018	Final Order	vote dilution	United States of America v. Village of Port Chester, 704 F.Supp.2d 411 (S.D.N.Y. 2010)

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NORTH CAROLINA					
Statewide	Section 5 objection letter	1996	Attorney General Objection	vote dilution	Section 5 objection letter, Loretta King to Charles M. Hensey (Feb. 13, 1996) (North Carolina)
Statewide	case/litigation	1996	Final Order	vote dilution	Shaw v. Hunt, 517 U.S. 899, 900 (1996)
Statewide	case/litigation	2016	Final Order	identification requirements; barriers to registration; problems at the polls; early voting	North Carolina State Conference of NAACP v. McCrory, 831 F.3d 204 (4th Cir. 2016) cert. denied 137 S. Ct. 1399, 198 L. Ed. 2d 220 (2017)
Statewide	case/litigation	2018	Final Order	racial gerrymandering	Covington v. North Carolina (Covington I), 316 F.R.D. 117 (M.D.N.C. 2016) summarily aff'd North Carolina v. Covington, 137 S.Ct. 2211 (2017) Covington v. North Carolina (Covington II), 283 F. Supp. 3d 410 (M.D. N.C. 2018), summarily aff'd in part, rev'd in part, North Carolina v. Covington, 138 S.Ct. 2548 (2018).
Anson County Board of Education	case/litigation	1994	Consent Decree	vote dilution	United States v. Anson Board of Education, No. 3:93-cv-00210 (W.D.N.C. 1994)
Cleveland County Board of Commissioners	case/litigation	1994	Consent Decree	vote dilution	Campbell v. Cleveland Co. Board of Commissioners, 4:49-cv-00011 (W.D.N.C. 1994)
Laurinburg City Council	case/litigation	1994	Dismissed after alleged violation addressed	vote dilution	Speller v. Laurinburg, No. 3:93-cv-00365 (M.D.N.C. 1994)

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Rowan County Board of Education	case/litigation	1994	Consent Decree	vote dilution	N.A.A.C.P. v. Rowan Board of Education, No. 4:91-cv-00293-FWB-RAE (M.D.N.C. 1994)
Tyrrell County	case/litigation	1994	Consent Decree	vote dilution	Rowsom v Tyrrell County Commissioners, No. 2:93-cv-00033 (E.D.N.C. 1994)
Washington County	case/litigation	1994	Consent Decree	vote dilution	Wilkins v. Washington County Commissioners, No. 2:93-cv-0012 (E.D.N.C. 1996)
Town of Mt. Olive	case/litigation	1995	Dismissed after alleged violation addressed	vote dilution	Fussell v. Town of Mount Olive, No. 5:93-cv-00303 (E.D.N.C. 1995)
Person County	case/litigation	1995	Consent Decree	vote dilution	Webster v. Board of Education of Person County, No. 1:91-cv-00554 (M.D.N.C. 1995)
Granville County	Section 5 objection letter	1997	Attorney General Objection	vote dilution	Section 5 objection letter, Isabelle Katz Pinzler to Susan K. Nichols (Feb. 3, 1997) (North Carolina)
Harnett County	case/litigation	2003	Dismissed after alleged violation addressed	vote dilution	Porter v. Stewart, No. 5:88-cv-00950 (E.D.N.C. 2003)
Franklin County	case/litigation	2004	Dismissed after alleged violation addressed	vote dilution	White v. Franklin County, No. 5:03-cv-00481 (E.D.N.C. 2004)
City of Fayetteville	Section 5 objection letter	2007	Attorney General Objection	vote dilution	Section 5 objection letter, Wan J. Kim to Michael Crowell (Jun. 25, 2007) (North Carolina)

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City of Kingston	Section 5 objection letter	2009	Attorney General Objection	vote dilution	Section 5 objection letter, Loretta King to James P. Cauley III (Aug. 17, 2009) (North Carolina)
Pitt County School District	Section 5 objection letter	2012	Attorney General Objection	vote dilution	Section 5 objection letter, Tom Perez to Robert T. Sonnenberg (April 30, 2012) (North Carolina)
Jones	case/litigation	2017	Consent Decree	vote dilution	Hall, et al. v. Jones County Board of Commissioners, Case No. 4-17-cv-18 (ED NC 2017)
NORTH DAKOTA					
Benson County	case/litigation	2000	Consent Decree	vote dilution	United States v. Benson Cty., No. 2:00-cv-00030-RSW-KKK (D.N.D. Mar. 10, 2000).
Benson County	case/litigation	2011	Preliminary Injunction	polling place locations	Spirit Lake Tribe v. Benson Cty., No. 2:10-cv-00095-RRE-KKK, 2010 WL 4226614 (D.N.D. Oct. 21, 2010)
OHIO					
City of Euclid	case/litigation	2008	Final Order	vote dilution	U.S. v. City of Euclid, WL 4790789, Case No. 1:06CV1652, (N.D. Ohio Aug. 1, 2007).
Cuyahoga County	case/litigation	2010	Settlement Agreement	language assistance	United States of America v. Cuyahoga Board of Elections, et al., No. 1:10-cv-01949
Lorain County	case/litigation	2011	Settlement Agreement	language assistance	United States of America v. Lorain County, et al., No. 1:11-cv-02122

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PENNSYLVANIA					
Statewide	case/litigation	2009	Final Order	problems at the polls	Pa. NAACP v. Cortes, No. 2:08-cv-05048 (E.D. Pa. Jan. 29, 2009), https://ecf.paed.uscourts.gov/doc1/15315000562
Berks County	case/litigation	2003	Final Order	problems at the polls; language assistance	United States v. Berks County, Pa., 277 F. Supp.2d 570 (E.D. Pa. 2003)
City of Philadelphia, et. al.	case/litigation	2007	Settlement Agreement	language assistance	United States v. City of Philadelphia, PA (E.D. Pa. 2006) https://www.justice.gov/sites/default/files/crt/legacy/2010/12/15/phila_settlement.pdf https://www.justice.gov/sites/default/files/crt/legacy/2010/12/15/phila_amend.pdf
Bethlehem Area School District	case/litigation	2008	Settlement Agreement	vote dilution	Negron v. Bethleham Area School District, No. 2:06-cv-0666 (E.D. Pa. Aug. 12, 2008), https://ecf.paed.uscourts.gov/doc1/15314381817
Bucks County, et. al.	case/litigation	2009	Dismissed after alleged violation addressed	polling place locations	Prescod v. Bucks County, Pa., No. 2:08-cv-03778 (E.D. Pa. Oct. 10, 2008), https://ecf.paed.uscourts.gov/doc1/15314630796
Chester County, et. al.	case/litigation	2010	Settlement Agreement	problems at the polls polling place locations	English, et al v. Chester County, Case No. 2:2010cv0044 (E.D. Pa. 2010)

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SOUTH CAROLINA					
Statewide	Section 5 objection letter	1994	Attorney General Objection	vote dilution	Section 5 objection letter, Deval L. Patrick to Robert J. Sheheen (May 2, 1994) (South Carolina)
Statewide	case/litigation	1996	Final Order	racial gerrymandering	Smith v. Beasley, 946 F.Supp. 1174 (D.SC. 1996)
Statewide	Section 5 objection letter	1997	Attorney General Objection	vote dilution	Section 5 objection letter, Isabelle Katz Pinzler to John W. Drummond (Apr. 1, 1997) (South Carolina)
Statewide	Section 5 objection letter; case/litigation	2011	Attorney General Objection; Final Court Order	identification requirements; case/litigation	Thomas E. Perez objection letter (5/18/2011); South Carolina v. United States, Civil Action No. 898 F. Supp. 30 (D.D.C. 2012);
Lee County and Lee County School District	Section 5 objection letter	1994	Attorney General Objection	problems at the polls	Section 5 objection letter, Deval L. Patrick to Jacob H. Jennings (June 6, 1994) (South Carolina)
Florence and Williamsburg Counties	Section 5 objection letter	1994	Attorney General Objection	vote dilution	Section 5 objection letter Deval L. Patrick objection letter
Town of Hemingway	Section 5 objection letter	1994	Attorney General Objection	vote dilution	Section 5 objection letter, Deval L. Patrick to Gregory B. Askins and Jeffrey N. Thorndahl (July 2, 1994) (South Carolina
Georgetown County School District	Section 5 objection letter	1994	Attorney General Objection	vote dilution	Section 5 objection letter, Kerry Alan Scanlon to C. Havird Jones, Jr. (Oct. 3, 1994) (South Carolina)
North Charleston	Section 5 objection letter	1994	Attorney General Objection	vote dilution	Section 5 objection letter, Deval L. Patrick to James E. Gonzales (Oct. 17, 1994) (South Carolina)

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Spartanburg County School District	Section 5 objection letter	1994	Attorney General Objection	vote dilution	Section 5 objection letter, Deval L. Patrick to C. Havird Jones (Nov. 20, 1995) (South Carolina)
Spartanburg County School District	Section 5 objection letter	1995	Attorney General Objection	vote dilution	Section 5 objection letter, Deval L. Patrick to C. Havird Jones (No. 20, 1995) (South Carolina)
Gaffney Board of Public Works	Section 5 objection letter	1996	Attorney General Objection	vote dilution	Section 5 objection letter, Deval L. Patrick to James R. Thompson (March 5, 1996) (South Carolina)
Horry County	Section 5 objection letter	1998	Attorney General Objection	vote dilution	Section 5 objection letter, Bill Lann Lee to John C. Henry (May 20, 1998) (South Carolina)
Charleston	Section 5 objection letter	2001	Attorney General Objection	vote dilution	Section 5 objection letter, Alex Acosta to Francis I. Cantwell (Oct. 12, 2001) (South Carolina)
Greer	Section 5 objection letter	2001	Attorney General Objection	vote dilution	Section 5 objection letter, Ralph F. Boyd, Jr. to John B. Duggan (Nov. 2, 2001) (South Carolina)
Sumter County	Section 5 objection letter	2002	Attorney General Objection	vote dilution	Section 5 objection letter, Ralph F. Boyd, Jr. to Charles T. Edens (Jun. 27, 2002) (South Carolina)
Union County School District	Section 5 objection letter	2002	Attorney General Objection	vote dilution	Section 5 objection letter, Ralph F. Boyd, Jr. to C. Havird Jones (Sep. 3, 2002) (South Carolina)
Clinton	Section 5 objection letter	2002	Attorney General Objection	vote dilution	Section 5 objection letter, Ralph F. Boyd, Jr. to C. Samuel Bennett II (Dec. 9, 2002) (South Carolina)

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Charleston County	case/litigation	2003	Final Order	vote dilution	United States v. Charleston Cty., 316 F. Supp. 2d 268 (D.S.C. 2003), aff'd sub nom. United States v. Charleston Cty., S.C., 365 F.3d 341 (4th Cir. 2004)
Cherokee County School District No. 1	Section 5 objection letter	2003	Attorney General Objection	vote dilution	Section 5 objection letter, Ralph F. Boyd, Jr. to C. Havird Jones (Jun. 16, 2003) (South Carolina)
North	Section 5 objection letter	2003	Attorney General Objection	vote dilution	Section 5 objection letter, Alex Acosta to H. Bruce Buckheister (Sep. 16, 2003) (South Carolina)
Charleston County School District	Section 5 objection letter	2004	Attorney General Objection	vote dilution	Section 5 objection letter, Alex Acosta to C. Havird Jones (Feb. 26, 2004) (South Carolina)
Richland-Lexington School District No. 5	Section 5 objection letter	2004	Attorney General Objection	vote dilution	Section 5 objection letter, Alex Acosta to C. Havird Jones (Jun. 25, 2004) (South Carolina)
City of Columbia	case/litigation	2010	Preliminary Injunction	vote dilution (this is a Section 5 case involving a city's failure to preclear a change regarding an election)	Butler v. City of Columbia, No. 3:10–CV–794–CMC–CHH–JFA, 2010 WL 1372299 (D.SC. 2010)
Fairfield County School District	Section 5 objection letter	2010	Attorney General Objection	vote dilution	Section 5 objection letter, Thomas E. Perez to C. Havird Jones (Aug. 16, 2010) (South Carolina)

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SOUTH DAKOTA					
Statewide	Section 5 objection letter	1995	Attorney General Objection	other barriers to voter registration	Section 5 objection letter, Deval L. Patrick to Hon. Joyce Hazeltine (Jun. 19, 1995) (South Dakota)
Statewide	case/litigation	2002	Final Order	violation of Section 5 of the VRA	Bone Shirt v. Hazeltine, 200 F. Supp. 2d 1150 (D.S.D. 2002).
Statewide	case/litigation	2002	Consent Decree	violation of Section 5 of the VRA	Quick Bear Quiver v. Hazeltine, No. 02-5069 (D.S.D. 2002).
Statewide	case/litigation	2004	Final Order	vote dilution	Reference: Bone Shirt v. Hazeltine, 336 F.Supp.2d 976 (D.S.D. 2004)
Statewide	case/litigation	2009	Settlement Agreement	other barriers to voter registration	Janis v. Nelson, CIV. 06-5019 (D.S.D. 2009).
Enemy Swim Sanitary District	case/litigation	2000	Settlement Agreement	other barriers to voter registration (maintaining boundaries with the purpose and effect of excluding Native American voters)	United States v. Day County, S.D., CIV. 99-1024 (D.S.D. 2000).
Wagner Community School District	case/litigation	2003	Consent Decree	vote dilution	Weddell v. Wagner Cmty. Sch. Dist., CIV. 02-4056 (D.S.D. 2003).
Buffalo County	case/litigation	2004	Consent Decree	vote dilution	Kirkie v. Buffalo County, S.D., CIV. 03-3011 (D.S.D. 2004).
Charles Mix County	case/litigation	2005	Settlement Agreement	vote dilution, violation of Section 5 of the VRA	Blackmoon v. Charles Mix County, CIV. 05-4017 (2007); Quick Bear Quiver v. Nelson, 387 F. Supp. 2d 1027 (D.S.D. 2005).

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Charles Mix County	Section 5 objection letter	2008	Attorney General Objecton	vote dilution	Section 5 objection letter, Grace Chung Becker to Sara Frankenstein (Feb. 11, 2008) (South Dakota)
Shannon County	case/litigation	2013	Dismissed after alleged violation addressed	early or absentee voting	Brooks v. Gant, CIV. 12-5003 (D.S.D. 2013).
TENNESSEE					
Crockett County and the Crockett County Board of County Commissioners	case/litigation	2001	Settlement Agreement	vote dilution	United States v. Crockett County, Civil Action 1-01-1129 (W.D. Tenn. 2001); Complaint and Consent Decree.
City of Bolivar	case/litigation	2003	Consent Decree	vote dilution	Hardeman Cty NAACP v. Frost, et al., 03-1041 (W.D. Tenn. Dec. 9, 2003)
TEXAS					
Statewide	Section 5 objection letter	1995	Attorney General Objection	language assistance	Section 5 objection letter, Deval L. Patrick to Ronald Kirk (Feb. 17, 1995) (Texas)
Statewide	Section 5 objection letter	1996	Attorney General Objection	barriers to registration	Section 5 objection letter, Deval L. Patrick to Antonio Garza (Jan. 16, 1996) (Texas)
Statewide	case/litigation	1998	Preliminary Injunction	other - change of election structure	LULAC of Texas v. State of Texas, Case no. 96-cv-00930-HFG-SS (W.D. Tex 1996)
Statewide	Section 5 objection letter	2001	Attorney General Objection	redistricting	Section 5 objection letter, Ralph R. Boyd to Geoffrey Connor (Nov. 16, 2001) (Texas)
Statewide	Section 5 objection letter	2008	Attorney General Objection	other - change in election qualification requirement	Section 5 objection letter, Grace Chung Becker to Phil Wilson (Aug. 21, 2008) (Texas)

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Statewide	Section 5 objection letter	2012	Attorney General Objection	vote dilution	Section 5 objection letter, Thomas E. Perez to Keith Ingram (March 12, 2012)(Texas)
Statewide	case/litigation	2013	remedial plan adopted	vote dilution	Perez v. Perry, 891 F. Supp. 2d 808 (W.D. Tex. 2012)
Statewide	case/litigation	2014	Final Order	vote dilution	Texas v. Holder, 888 F.Supp.2d. 113 (D.D.C. 2012), vacated and remanded, 570 U.S. 928 (2013), dismissed, cv. 12-128 (RMC)(2014)
Statewide	case/litigation	2016	Final Order	vote denial	Veasey v. Abbott, 830 F.3d 216 (2016)
Statewide	case/litigation	2018	Final Order	vote dilution	Perez et al v. Perry et al, Case No. 11-CV-360 (W.D. Tex. 2011). Later Abbott v. Perez, 138 S.Ct. 2305 (2018).
Statewide	case/litigation	2019	Final Order	problems at the polls	OCA-Greater Houston et al v. State of Texas et al, 1:2015cv00679, (W. D. Tex. 2015).
Statewide	case/litigation	2019	Preliminary Injunction; Settlement	vote dilution	MOVE Texas Civic Fund et al v. Whitley et al, 5:2019cv00171, (W.D. Tex. 2019).
Tarrant County	Section 5 objection letter	1994	Attorney General Objection	vote dilution	Section 5 objection letter, Deval L. Patrick to Ronald Kirk (Aug. 15, 1994) (Texas)
Marion County	Section 5 objection letter	1994	Attorney General Objection	polling place location	Section 5 objection letter, Deval L. Patrick to James P. Finstrom (Apr. 18, 1994) (Texas)

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Midland County	Section 5 objection letter	1994	Attorney General Objection	vote dilution	Section 5 objection letter, Deval L. Patrick to John Hannah, Jr. (May 9, 1994) (Texas)
Fort Bend County and Harris County	Section 5 objection letter	1994	Attorney General Objection	vote dilution	Section 5 objection letter, Deval L. Patrick to Ronald Kirk (May 31, 1994) (Texas)
Limestone County	Section 5 objection letter	1994	Attorney General Objection	vote dilution	Section 5 objection letter, Deval L. Patrick to David M. Guinn (Jun. 13, 1994) (Texas)
Galveston Independent School District	case/litigation	1994	Settlement Agreement	vote dilution, polling place locations	Henderson, et al v. Galveston Independent, et al, Case No. 1994cv00144 (S. D. Tex, 1994)
Edna Independent School District	Section 5 objection letter	1994	Attorney General Objection	vote dilution	Section 5 objection letter, Stuart Ishimaru to Arturo G. Michel (Aug. 22, 1994) (Texas)
Morton	Section 5 objection letter	1994	Attorney General Objection	language assistance	Section 5 objection letter, Kerry Scanlon to Paul Lyle (Sep. 12, 1994) (Texas)
San Antonio	Section 5 objection letter	1994	Attorney General Objection	language assistance	Section 5 objection letter, Deval L. Patrick to Lloyd Garcia (Oct. 21, 1994) (Texas)
Gonzalez County Underground Water Conservation District	Section 5 objection letter	1994	Attorney General Objection	vote dilution	Section 5 objection letter, Deval L. Patrick to Mary Ann Wyatt (Oct. 31, 1994) (Texas)
Judton Independent School District	Section 5 objection letter	1994	Attorney General Objection	language assistance	Section 5 objection letter, Deval L. Patrick to Galen R. Elolf (Nov. 18, 1994) (Texas)

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Edwards Underground water District	Section 5 objection letter	1995	Attorney General Objection	problems at the polls	Section 5 objection letter, Deval L. Patrick to Sally Tamez-Salas (March 2, 1995) (Texas)
Karnes City	Section 5 objection letter	1995	Attorney General Objection	vote dilution	Section 5 objection letter, Deval L. Patrick to Don Tymrac (Oct. 31, 1994) (Texas)
City of Boerne	case/litigation	1996	Settlement Agreement	vote dilution	League of United Latin American Citizens, District 19 v. City of Boerne et al; Case no. 5:96-cv-00808 (W.D. Tex 1996)
Sharyland Independent School District	case/litigation	1997	Dismissed after alleged violation addressed	vote dilution	League of United Lat, et al v. Sharyland ISD, et al, Case No. 1996cv00132 (S. D. Tex, 1996)
Galveston County	Section 5 objection letter	1998	Attorney General Objection	vote dilution	Section 5 objection letter, Bill Lann Lee to Barbara E. Roberts (Dec. 14, 1998) (Texas)
Lamesa	Section 5 objection letter	1999	Attorney General Objection	deannexaction	Section 5 objection letter, Bill Lann Lee to Robert Gorsline (Jul. 16, 1999) (Texas)
Sealy Independent School District	Section 5 objection letter	2000	Attorney General Objection	vote dilution	Section 5 objection letter, Bill Lann Lee to David Mendez (Jun. 5, 2000) (Texas)
Haskell Consolidated Independent School District	Section 5 objection letter	2001	Attorney General Objection	vote dilution	Section 5 objection letter, Ralph F. Boyd to Cheryl T. Mehl (Sept. 24, 2001) (Texas)
Schleicher County Independent School District	case/litigation	2002	Final Order	vote dilution	Belman, et al v. Schleicher Co ISD, et al., Case No. 6:2002cv00022 (N.D. Tex. 2002).

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Waller County	Section 5 objection letter	2002	Attorney General Objection	redistricting	Section 5 objection letter, J. Michael Wiggins to Denise Nance Pierce (Jun. 21, 2002) (Texas)
Freeport	Section 5 objection letter	2002	Attorney General Objection	vote dilution	Section 5 objection letter, J. Michael Wiggins to Wallace Shaw (Aug. 12, 2002) (Texas)
Bexar County	case/litigation	2003	Preliminary Injunction	vote dilution	M Hernandez Chapter v. Bexar County, et al Case No. 5:03-cv-00816-WRF (W.D. Tex. 2003)
Yorktown City Council	case/litigation	2003	Dismissed after alleged violation addressed	failure to obtain section 5 preclearance	Perez v. City of Yorktown, The, et al, Case No. 2003-cv-029 (S.D. Tex. 2003)
Waller County	case/litigation	2004	Settlement Agreement	other barriers to voter registration	Prairie View Chapter, et al v. Kitzman, Case No. 2004cv00459 (S. D. Tex. 2004)
Bexar County	case/litigation	2005	Final Order	polling place locations	American GI Forum, et al v. Bexar County, et al, Case No. 5:04-cv-00181-FB (W.D. Tex. 2004)
Ector County	case/litigation	2005	Consent Decree	language assistance	United States, et al v. Ector County, Texas, et al, Case No. 7:05-cv-00131-RAJ (W.D. Tex. 2005)
Hale County, TX	case/litigation	2006	Consent Decree	language assistance	United States of America v. Hale County, Texas et al., Case No. 5:2006cv00043 (N.D. Tex. 2006).
North Harris Montgomery Community College District	Section 5 objection letter	2006	Attorney General Objection	polling place location	Section 5 objection letter, Wan J. Kim to Renee Smith Byas (May 5, 2006) (Texas)

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Brazos County	case/litigation	2006	Consent Decree	language assistance	The United States Of America v. Brazos County, Texas et al, Case No. 2006cv02165 (S. D. Tex. 2006)
North Harris Montgomery Community College District	case/litigation	2006	Settlement Agreement	problems at the polls	The United States Of America v. North Harris Montgomery Community College District et al, Case No. 2006-cv-02488 (S. D. Tex. 2006)
Amarillo College District	case/litigation	2006	Dismissed after alleged violation addressed	vote dilution	Bosquez et al v. Amarillo College District, Case No. 2:2005cv00323 (N.D. Tex. 2006).
Dallas Independent School District	case/litigation	2006	Dismissed after alleged violation addressed	vote dilution	Villegas, et al v. Dallas Independent S, et al., Case No. 3:2002cv00858 (N.D. Tex. 2006).
Bexar Metropolitan Water District	case/litigation	2007	Preliminary Injunction	vote dilution	Rios v. Bexar Metro. Water, et al - Case no. 5:96-cv-00335 (W.D. Tex 1996)
The City of Amarillo, TX	case/litigation	2007	Settlement Agreement	vote dilution	Bosquez et al v. City of Amarillo, TX, Case No. 2:2005cv00324 (N.D. Tex. 2007).
Galveston County	case/litigation	2007	Consent Decree	language assistance; problems at the polls	United States v. Galveston County, Case No. 07-cv-00377 (S.D. Tex. 2007)
City of Hondo, Texas	case/litigation	2007	Dismissed after alleged violation addressed	1) vote dilution; (2) language assistance	Garcia, et al v. City of Hondo, Texas, Case No. 09-cv-00394 (W.D. Tex.2007)
Littlefield Independent School District	case/litigation	2007	Consent Decree	language assistance	United States of America v. Littlefield Independent School District et al., Case No. 5:2007cv00145 (N.D. Tex. 2007).

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Post Independent School District	case/litigation	2007	Consent Decree	language assistance	United States of America v. Post Independent School District et al., Case No. 5:2007cv00146 (N.D. Tex. 2007).
Seagraves Independent School District	case/litigation	2007	Consent Decree	language assistance	United States of America v. Seagraves Independent School District et al., Case No. 5:2007cv00147 (N.D. Tex. 2007).
Smyer Independent School District	case/litigation	2007	Consent Decree	language assistance	United States of America et al v. Lewis, Case No. 5:2007cv00148 (N.D. Tex. 2007).
City of Earth	case/litigation	2007	Consent Decree	language assistance	United States of America v. City of Earth, Texas et al., Case No. 5:2007cv00144 (N.D. Tex. 2007).
Engelman Irrigation District	case/litigation	2008	Final Order	other barriers to voter registration	Shields et al v Engelman Irrigation District et al, Case No. 08-cv-00116 (S.D. Tex. 2008)
Waller County	case/litigation	2008	Consent Decree	other barriers to voter registration	UNITED STATES DEPARTMENT OF JUSTICE v. Waller County et al, Case No. 18-cv-03022 (S.D. Tex. 2008)
Dumas Independent School District	case/litigation	2008	Dismissed after alleged violation addressed	vote dilution	League of United Latin American Citizens, Statewide v. Dumas Independent School District et al., Case No. 2:1993cv00154 (N.D. Tex. 2008).
Gonzales County	Section 5 objection letter	2009	Attorney General Objection	language assistance; problems at the polls	Section 5 objection letter, Loretta King to Robert T. Bass (March 24, 2009) (Texas)

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Fort Bend County	case/litigation	2009	Consent Decree	language assistance; other barriers to voter registration; problems at the polls	United States of America v. Fort Bend County, Texas, Case No. 09-cv-01058 (S.D. Tex. 2009)
Texas Democratic Party and State of Texas	case/litigation	2009	Dismissed after alleged violation addressed	vote dilution	LULAC of Texas et al v. State of Texas et al, Case 08-cv-00389 (W.D. Tex.2007)
City of Irving	case/litigation	2010	Final Order	vote dilution	Benavidez v. The City of Irving, Texas et al., Case No. 3:2007cv01850 (N.D. Tex. 2010).
Runnels County	Section 5 objection letter	2010	Attorney General Objection	language assistance; problems at the polls	Section 5 objection letter, Thomas E. Perez to Elsa Ocker (Jun. 28, 2010) (Texas)
Val Verde County Clerk, Val Verde County and State of Texas	case/litigation	2010	Dismissed after alleged violation addressed	vote dilution	LULAC of Texas et al, Case No. :10-cv-00058 (W.D. Tex. 2010)
Dallas County, Texas	case/litigation	2011	Dismissed after alleged violation addressed	Problems at polls	Texas Democratic Party v. Dallas County, Case No. 3:2008cv02117 (N.D. Tex. 2011).
Board of Directors for Garza County Hospital District	case/litigation	2011	Consent Decree	vote dilution	Tobias, et al v. Garza County Hospital, et al,5:2000-cv-00293, (N.D. Tex. 2000).
Galveston County	Section 5 objection letter	2011	Attorney General Objection	language assistance; problems at the polls	Section 5 objection letter, Thomas E. Perez to C. Robert Heath (Oct. 3, 2011) (Texas)
Medina County	case/litigation	2011	Final Order	vote dilution	Vasquez-Lopez et al v. Medina County, Texas et al, Case 5:11-cv-00945 (W.D. Tex. 2011)

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Nueces County	Section 5 objection letter	2012	Dismissed after alleged violation addressed	vote dilution	No. 11-1784 (D.D.C. 2011)
Galveston County	Section 5 objection letter; case/litigation	2012	Attorney General Objection	vote dilution	Section 5 objection letter, Thomas E. Perez to James E. Trainor III (March 5, 2012) (Texas); Galveston County, Texas v. United States of America et al., Case No. 11-1837 (D.D.C. 2011)
Galveston County	case/litigation	2012	Preliminary Injunction	vote dilution	Petteway, et al. v. Galveston County, Texas, et al., Case No. 2011cv00511 (S.D. Tex 2011)
Beaumont Independent School District, Jefferson County	Section 5 objection letter	2012	Attorney General Objection	vote dilution	Section 5 objection letter, Thomas E. Perez to Melody Thomas Chappell (Dec. 21, 2012) (Texas)
City of Farmers Branch	case/litigation	2013	Dismissed after alleged violation addressed	vote dilution	Fabela et al v. City of Farmers Branch Texas et al., Case No. 3:2010cv01425 (N.D. Tex. 2013).
Beaumont Independent School District, Jefferson County	Section 5 objection letter	2013	Attorney General Objection	vote dilution	Section 5 objection letter, Thomas E. Perez to Melody Thomas Chappell (Apr. 8, 2013) (Texas)
Lone Star College System District	case/litigation	2013	Consent Decree	vote dilution	Hubbard et al v. Lone Star College System et al, Case No. 2013cv01635 (S.D. Tex 2013)
Irving Independent School District	case/litigation	2014	Final Order	vote dilution	Benavidez v. Irving Independent School District et al., Case No. 3:2013cv00087 (N.D. Tex. 2014).
Grand Prairie Independent School District	case/litigation	2014	Settlement Agreement	vote dilution	Rodriguez v. Grand Prairie Independent School District et al., Case No. 3:202013cv01788 (N.D. Tex. 2014).

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City of Pasadena	case/litigation	2017	Final Order	vote dilution	Patino et al v. City of Pasadena et al, Case No. 2014cv03241 (S.D. Tex. 2014)
Hereford Independent School District	case/litigation	2018	Settlement Agreement	vote dilution	Gamez v. Hereford Independent School District et al., Case No. 2:1995cv00028 (N.D. Tex. 2018).
Richardson Independent School District	case/litigation	2019	Settlement Agreement	vote dilution	Tyson v. Richardson Independent School District et al., Case No. 3:2018cv00212 (N.D. Tex. 2019).
UTAH					
San Juan County	case/litigation	2016	Final Order	vote dilution	Navajo Nation et al v. San Juan Cty., 929 F.3d 1270 (10th Cir. 2019) (affirming the district court); Navajo Nation et al v. San Juan Cty., 162 F. Supp. 3d 1162 (D. Utah 2016); Navajo Nation v. San Juan Cty., 266 F. Supp. 3d 1341 (D. Utah 2017); Navajo Nation v. San Juan Cty., 2:12-cv-39, 2017 U.S. Dist. LEXIS 211230 (D. Utah Dec. 21, 2017)
San Juan County	case/litigation	2018	Settlement Agreement	language assistance; polling place location	Navajo Nation Human Rights Commission et al v. San Juan Cty. et al, 215 F. Supp. 3d 1201 (D. Utah 2017); Id. Case No. 2:16-cv-154, 2017 U.S. Dist. LEXIS 145158 (D. Utah Sept. 7, 2017); 2:16-cv-154, Dkt. No. 198 (D. Utah Feb. 20, 2018)

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VIRGINIA					
Statewide	case/litigation	1997	Final Order	vote dilution	Moon v. Meadows, 952 F. Supp. 1141 (E.D. Va.), aff'd, 521 U.S. 1113, 117 S. Ct. 2501 (1997), and aff'd sub nom. Harris v. Moon, 521 U.S. 1113 (1997)
Statewide	case/litigation	2015	Final Order	racial gerrymandering	Page v. Virginia State Bd. Of Elections, No. 3:13CV678, 2015 WL 3604029, at *1 (E.D. Va. June 5, 2015)
Statewide	case/litigation	2018	Final Order	racial gerrymandering	Bethune-Hill v. Virginia State Bd. of Elections, 326 F. Supp. 3d 128 (E.D. Va. 2018), appeal dismissed sub nom. Virginia House of Delegates v. Bethune-Hill, 139 S. Ct. 1945 (2019)
City of Newport News, VA	case/litigation	1994	Consent Decree	vote dilution	U.S. v. City of Newport News, No. 4:94-cv-00155 (E.D. Va. 1994)
Dinwiddie County, VA	Section 5 objection letter	1999	Attorney General Objection	polling place locations	Section 5 objection letter, Bill Lann Lee to Benjamin W. Emerson (Dec. 27, 1999) (Virginia)
Northhampton County, VA	Section 5 objection letter	2001	Attorney General Objection	vote dilution	Section 5 objection letter, Ralph F. Boyd, Jr. to James E. Trainor III (Sept. 28, 2001) (Virginia)
Northhampton County, VA	Section 5 objection letter	2001	Attorney General Objection	vote dilution	Section 5 objection letter, Ralph F. Boyd, Jr. to James E. Trainor III (Sept. 28, 2001) (Virginia)
Pittsylvania County, VA	Section 5 objection letter	2002	Attorney General Objection	vote dilution	Section 5 objection letter, Ralph F. Boyd, Jr. to William D. Sleeper (Apr. 29, 2002) (Virginia)

Jurisdiction	Type of Matter	Date of Interim or Final Resolution	Results	Type of Voting Discrimination ((1) vote dilution; (2) language assistance; (3) identification requirements; (4) other barriers to voter registration; (5) problems at the polls; (6) polling place locations; (7) early or absentee voting; and/or (8) other)	Reference
Cumberland County, VA	Section 5 objection letter	2002	Attorney General Objection	vote dilution	Section 5 objection letter, Ralph F. Boyd, Jr. to Darvin Satterwhite (July 9, 2002) (Virginia)
Northhampton County, VA	Section 5 objection letter	2003	Attorney General Objection	vote dilution	Section 5 objection letter, Ralph F. Boyd, Jr. to Bruce D. Jones, Jr. (May 19, 2003) (Virginia)
Northhampton County, VA	Section 5 objection letter	2003	Attorney General Objection	vote dilution	Section 5 objection letter, J. Michael Wiggins to Bruce D. Jones, Jr. (Oct. 21, 2001) (Virginia)
WASHINGTON					
Yakima County	case/litigation	2004	Consent Decree	language assistance	United States v. Yakima County, No. CV-04- 3072-LRS (E.D. Wash. 2004)
City of Yakima	case/litigation	2014	Final Order	vote dilution	Montes v. City of Yakima: https://aclu-wa.org/file/99782/download?token=OWBlvKUP
City of Pasco	case/litigation	2016	Consent Decree	vote dilution	Glatt v. City of Pasco: https://www.aclu-wa.org/file/101908/download?token=oHPP3kU5
WISCONSIN					
Statewide	case/litigation	2012	Final Order	vote dilution	Baldus v. Members of Wisconsin Gov't Accountability Board, 849 F.Supp.2d 840 (E.D. Wis 2012)
WYOMING					
Fremont County	case/litigation	2010	Final Order	vote dilution	Large v. Fremont County, Wyo., 709 F. Supp. 2d 1176 (D. Wyo. 2010)

LAWYERS' COMMITTEE FOR
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UNDER LAW

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Voting Cases the Lawyers' Committee for Civil Rights Under Law Has Participated in Since the Decision in Shelby County v. Holder

- *A. Philip Randolph Inst. of Ohio v. LaRose*, No. 1:20-CV-01908, 493 F. Supp. 3d 596 (N.D. Ohio Oct. 6, 2020), *stayed*, 831 Fed. App'x 188 (6th Cir. 2020). The Lawyers' Committee and co-counsel filed suit in the Northern District of Ohio on August 26, 2020, representing Ohio APRI, the League of Women Voters of Ohio, the Ohio NAACP, and a number of individual Plaintiffs in a challenge against Ohio Secretary of State Frank LaRose's Directive prohibiting any county to install more than one secure ballot drop box for the 2020 general election. The district court denied Plaintiffs' preliminary injunction and the case was dismissed without prejudice. On October 6, 2020, Secretary LaRose issued another directive authorizing county election board staff to collect absentee ballots off-site. Plaintiffs filed a motion for reconsideration based on the Secretary's favorable interpretation of the Directive. The district court granted the motion for reconsideration, and entered a preliminary injunction, which was stayed by Sixth Circuit on October 9. The case was voluntarily dismissed with prejudice, but without costs on October 22, 2020.
- *Abbott v. Perez*, 138 S. Ct. 2305 (2018). The Lawyers' Committee, Campaign Legal Center, and NAACP Legal Defense & Educational Fund filed a brief as amici curiae with the Supreme Court on April 4, 2018, requesting that the Court affirm the judgment of a three-judge panel of the United States District Court for the Western District of Texas, which had found that Texas's 2013 statewide redistricting maps unlawfully furthered and maintained purposeful dilution of minority voting strength in Texas's 2011 maps. The Supreme Court ruled that the 2013 maps were valid, with except for one district, and that Texas' past discrimination was not sufficient to undermine the good faith presumption of a legislature in its redistricting.
- *Action NC, et al. v. Strach et al*., No. 1:15-cv-1063 (M.D.N.C.). On December 15, 2015, the Lawyers' Committee and co-counsel representing three nonpartisan voter engagement organizations, Action NC, Democracy North Carolina and the North Carolina A. Philip Randolph Institute, and three individual Plaintiffs challenged North Carolina's failure to offer federally mandated voter registration services through motor vehicle and public assistance agencies under sections 5 and 7 of the National Voter Registration Act. The matter was resolved on June 25, 2018 when the parties reached a favorable settlement that required the agencies and the North Carolina Secretary of State to improve their voter registration forms, to provide assistance to individuals filling out voter registration forms (if needed) and to properly collect and transmit voter registration forms to election officials.
- *Ala. State Conf. of NAACP v. Alabama*, 264 F. Supp. 3d 1280 (M.D. Ala. 2017), *aff'd*, 949 F.3d 647 (11th Cir. 2020); 2020 WL 583803 (M.D. Ala., Feb. 5, 2020). The Lawyers' Committee and pro bono counsel brought an action on behalf of a civil rights organization and individual voters, claiming that Alabama's system of electing members of its three highest courts on the basis of statewide, at-large, elections diluted the votes of Black voters in violation of Section 2 of the Voting Rights Act of 1965. Defendants' motion to dismiss was denied by the district court, and its denial was affirmed by the Eleventh Circuit Court of Appeals. After trial, the district court entered judgment in favor of Defendants, finding that Plaintiffs had not met their burden of proving a Section 2

violation. After judgment, Alabama appealed to the Eleventh Circuit Court of Appeals to vacate its prior ruling that the doctrine of sovereign immunity did not bar this action, on the basis that the judgment in the case rendered the entire case moot. After the Eleventh Circuit declined to vacate the judgment, 806 F. App'x 975, Alabama petitioned the Supreme Court for a writ of certiorari, which was granted on May 17, 2021. The Supreme Court vacated the judgment and remanded the case to the Eleventh Circuit with instructions to dismiss the case as moot. (No. 20-1047, U.S. Supreme Court).

- *Alabama v. U.S. Dep't of Com.*, 396 F. Supp. 3d 1044 (N.D. Ala. 2019). This suit was filed by the State of Alabama and Congressman Mo Brooks, seeking a declaratory judgment that the Department of Commerce's Residence Rule that counted all persons residing in the United States on April 1, 2020, for purposes of the Census was unconstitutional. Specifically, the Plaintiffs allege that undocumented persons should not be counted in the census for purposes of apportionment of congressional seats and claim that Alabama will lose a congressional seat if they are counted. The Lawyers' Committee and pro bono counsel moved to intervene as Defendants on behalf of several Local Government Intervenors, and motions were granted on September 9, 2019. *Alabama v. U.S. Dep't of Com.*, 2018 WL 6570879 (N.D. Ala. Dec. 13, 2018); *Alabama v. U.S. Dep't of Com.*, 2019 WL 4260171 (N.D. Ala. Sept. 9, 2019). The district court denied certain of the Defendant and Defendant intervenors' motion to dismiss on the ground of lack of standing, *id.* at 396 F. Supp. 3d at 1044, and denied Plaintiffs' motion for a three-judge panel to be convened to adjudicate the case. *Alabama v. U.S. Dep't of Com.*, 493 F. Supp. 3d 1123 (N.D. Ala. 2020). After the Census Bureau issued its apportionment figures showing that Alabama would not lose a congressional seat as a result of the 2020 Census, the parties stipulated to voluntary dismissal of the action.
- *Bally, et. al. v. Gretchen Whitmer, et al.,* No. 1:20-cv-01088 (W.D. MI., filed Nov. 11, 2020). This was a lawsuit brought by four Michigan voters against the Governor of Michigan, Michigan Board of State Canvassers, the individual board members of the Michigan Board of State Canvassers, the Wayne County Board of Canvassers, individual members of the Wayne County Board of Canvassers, the Washtenaw County Board of Canvassers, individual members of the Washtenaw County Board of Canvassers, the Ingham County Board of Canvassers and individual members of the Ingham County Board of Canvassers seeking to exclude ballots cast in these counties in the certified election results. Plaintiffs alleged the exclusion of these votes was required because of alleged fraud and other irregularities in the Defendant counties. After the Lawyers' Committee and pro bono counsel filed a motion to intervene with the assistance of local counsel, and the court ordered the Plaintiffs to file a response to said motion, the Plaintiffs chose instead to file a voluntary dismissal on November 16, 2020.
- *Arctic Vill. Council v. Meyer*, No. 3AN-20-07858CI (AK. Superior Ct. 3rd Judicial Dist. Anchorage Oct. 5, 2020), *aff'd* sub nom. *Alaska v. Arctic Vill. Council*, S-17902 (AK. Supreme Ct. Oct. 12, 2020). Together with ACLU of Alaska, ACLU, and NARF, the Lawyers' Committee represented a tribe and several other Plaintiffs in a state constitutional challenge to Alaska's enforcement of the witness requirement for absentee ballots during the pandemic. The superior court granted Plaintiffs' preliminary injunction enjoining the state from enforcing its witness requirement for absentee ballots in the November general election and ordering the state to count unwitnessed absentee ballots.

The state appealed and after oral argument, the Alaska Supreme Court affirmed the district court's decision on October 12. The case is still pending.

- *Benisek v. Lamone*, 138 S. Ct. 1942 (2018). The Lawyers' Committee and pro bono counsel filed a brief on January 29, 2018 behalf of the NAACP, the Georgia State Conference of the NAACP, and individuals as amici curiae in support of neither party, in a case appealing the denial of a preliminary injunction against Maryland's implementation of its congressional districting maps. The case raised the issue of the justiciability of a claim of partisan gerrymandering, and the Lawyers' Committee's brief argued that such claims were justiciable, and provided an example from a case the Lawyers' Committee was litigating in Georgia as to the nature of the proofs that could be elicited in such a case. The Supreme Court did not reach the issue of justiciability, but affirmed the denial of the preliminary injunction motion on equity grounds.
- *Bethune-Hill v. Virginia State Bd. of Elections*, 137 S. Ct. 788 (2017). This case arose from the redistricting of 12 Virginia legislative districts after the 2010 Census. Plaintiffs, who were voters residing in each of the challenged districts, alleged the redistricting plan constituted an unlawful racial gerrymander. On September 14, 2016, the Lawyers' Committee and pro bono counsel filed an amicus curiae brief in support of neither party which focused upon the confusing nature of the lower court's holdings, which appeared to conflate the predominance inquiry for triggering strict scrutiny with the narrow tailoring inquiry for a district already subject to strict scrutiny. The Supreme Court affirmed the district court majority decision as to one district, but vacated and remanded to the district court with respect to the remaining 11 districts.
- *Brnovich, et al. v. Democratic National Committee, et al.*, Nos. 19-1257 and 19-1258 (U.S. Supreme Ct., Jan. 20, 2021). The Lawyers' Committee, the NAACP, and pro bono counsel filed a brief as amici curiae in the appeal from a decision of the Ninth Circuit Court of Appeals, sitting en banc, which had ruled that Arizona's laws prohibiting out-of-precinct voting and the collection of absentee allots by other than family members constituted racial discrimination in violation of Section 2 of the Voting Rights Act. This is the first case in decades taken by the Court in a Section 2 vote denial case, and the petitioners have argued that the Court should change settled standards for adjudication of such claims, specifically that Section 2 should apply only to voter "qualification" laws/ We and the NAACP have urged the Court not to abandon the established standard, because to do so would thwart the goals of the Fifteenth Amendment and the plain language of the Act and Congress's intent. The case is awaiting decision.
- *Brooks v. Mahoney*, No. 4:20-cv-00281-RSB (S.D. Ga.). The Lawyers' Committee and pro bono counsel filed a motion to intervene on behalf of the Georgia State Conference of the NAACP, Georgia Coalition for the People's Agenda, James Woodall, Helen Butler, and Rev. Melvin Ivey in this action seeking to stop the certification of the November 2020 presidential election. The Plaintiffs alleged various electoral irregularities occurred in eight Democratic and predominantly-minority counties surrounding absentee ballots. The Plaintiffs filed the action on November 12, 2020 and voluntarily dismissed the case on November 16, 2020, before any action had occurred in the case.
- *City of San Jose v. Ross,* 18-cv-02279 (N.D. Cal. filed Apr. 17, 2018) (consolidated with *California v. Ross*, No. 18-cv-01865). The Lawyers' Committee and co-counsel filed suit on behalf of the City of San Jose, California and the Black Alliance for Just Immigration, challenging the decision by Secretary of Commerce Wilbur Ross to add a citizenship

question to the 2020 Census. The case was consolidated with a similar case brought by the State of California. Defendants' first motion to dismiss was denied, 362 F. Supp. 3d 727 (N.D. Cal. 2018), as was their motion for summary judgment and Plaintiffs' partial motion for summary judgment, 362 F. Supp. 3d 749 (N.D. Cal. 2018). The matter proceeded to trial after the district court denied Defendants' motion in limine to exclude certain witnesses, 2019 WL 1975437 (N.D. Cal. Jan. 4, 2019). After trial, the district court issued a decision enjoining the addition of the citizenship question on the grounds that it violated the Enumeration Clause of the Constitution and the Administrative Procedure Act. 358 F. Supp. 3d 965 (N.D. Cal. 2019). Defendants filed a petition for certiorari with the U.S. Supreme Court and the Court granted the petition, vacated the judgment, and remanded the case to the United States Court of Appeals for the Ninth Circuit for further consideration in light of *Dep't of Com. v. New York*, 139 S. Ct. 2551 (2019), where the Court had found that the decision to add the citizenship question to the Census violated the Administrative Procedure Act. The Ninth Circuit dismissed Defendants' appeal on July 30, 2019. *City of San Jose v. Ross*, 2019 WL 4273890 (9th Cir. July 30, 2019).

- *City of San Jose, et al. v. Donald J. Trump, et. al.,* No. 5:20-5167 RRC-LHK-EMC, 497 F. Supp. 3d 680 (N.D. Cal. 2020), judgment vacated and remanded, 141 S. Ct. 1231 (2020). The Lawyers' Committee and co-counsel filed suit, claiming that President Trump's Executive Memorandum seeking to exclude undocumented persons from the apportionment count resulting from the 2020 Census violated the Census Act, and the Enumeration Clause and Fourteenth Amendment to the U.S. Constitution. A three-judge court granted Plaintiffs' motion for summary judgment, and denied Defendants' motion to dismiss. The Defendants appealed the decision to the Supreme Court. In a decision in a separate case on the same issues, *Trump v. New York*, 141 S. Ct. 530 (2020), the Supreme Court determined that Plaintiffs lacked standing because their injuries were not ripe. Just over a week later, the Supreme Court dismissed the Lawyers' Committee case on similar grounds.
- *Collins, et al. v. Adams, et al.,* No. 3:20-00375 CRS (W.D. Ky. 2020). The Lawyers' Committee and co-counsel filed suit claiming that the Governor, Secretary of State, and the State Board of Elections had unduly burdened the constitutional right to vote by failing to make the following adjustments for the general election in November 2020 in light of the COVID-19 public health emergency: (1) waive implementation of the state's new photo identification requirement; (2) implement no-excuse absentee voting; and (3) implement several changes to election procedures that improve the accessibility of absentee voting. The Lawyers' Committee filed a motion for a preliminary injunction, but the state ultimately announced that it was all implementing most of the adjustments that Plaintiffs were seeking. As a result, the Plaintiffs agreed to voluntarily dismiss the case.
- *Common Cause Indiana v. Lawson*, No. 1:20-cv-01825 (S.D. Ind.), *preliminary injunction granted*, No. 120CV01825RLYTAB, 488 F. Supp. 3d 724 (S.D. Ind. 2020), *reversed*, 978 F.3d 1036 (7th Cir. 2020). The Lawyers' Committee and co-counsel represented Plaintiff organizations challenging provisions restricting state court standing to bring action to extend poll hours and limiting available judicial remedies as an undue burden on the right to vote, a violation of procedural due process, and a violation of the Supremacy Clause. The district granted a preliminary injunction granted but the order was stayed and summarily reversed by Seventh Circuit. The case has been dismissed.

- *Common Cause Indiana and Indiana State Conference of the NAACP v. Lawson*, No. 1:20-cv-02007 (S.D. Ind.), *preliminary injunction granted*, 490 F. Supp. 311 (S.D. Ind. 2020), *reversed*, 977 F.3d 663 (7th Cir. 2020). The Lawyers' Committee and co-counsel represented Plaintiff organizations challenging a noon Election Day mail ballot receipt deadline as an undue burden on the fundamental right to vote during COVID-19 pandemic. The district court granted a preliminary injunction but the order was stayed and summarily reversed by Seventh Circuit.
- *Common Cause N.Y. v. Brehm*, 432 F. Supp. 3d 285 (S.D.N.Y. 2020). The Lawyers' Committee and co-counsel represented Common Cause New York in a successful challenge to a New York statute that required keeping inactive voters' names out of poll books on Election Day. The Plaintiffs brought the case in 2017 and the district court dismissed Plaintiffs' facial claim under the National Voter Registration Act. *Common Cause N.Y. v. Brehm*, 344 F. Supp. 3d 542 (S.D.N.Y. 2018). A full trial on the merits was held in October of 2019. In January of 2020, District Court Judge Allison J. Nathan held that the New York State imposed an unconstitutional burden on the fundamental right to vote and that the statute violated the National Voter Registration Act as applied to particular voters disenfranchised in recent elections. The district court permanently enjoined New York's prohibition on including inactive voters' names in poll books but held that inactive voters would have to continue casting provisional ballots, which would then automatically be counted.
- *Cook County Republican Party v. Pritzker, et al.*, 487 F. Supp. 3d 305 (N.D. Ill.). The Lawyers' Committee and co-counsel filed an amicus brief on behalf of voting rights and racial justice organizations in opposition to Plaintiff political party's motion for preliminary injunction challenging expanded access to mail voting during COVID-19 pandemic. The brief argued temporary measures expanding and encouraging voting by mail were justified by public interest in voting safely during pandemic, and that Plaintiff's allegation that these measures would lead to fraud were speculative and unsupported. The court denied Plaintiff's motion for preliminary injunction.
- *Cooper v. Harris*, 581 U.S. ---, 137 S. Ct. 1455 (2017). On October 19, 2016, the Lawyers' Committee and pro bono counsel filed a brief as amicus curiae on its own behalf, in support of the appellees, who had challenged North Carolina's congressional redistricting as including two districts that had been racially gerrymandered in violation of the Fourteenth Amendment. The brief argued that the Court had settled standards to apply in racial gerrymander cases; that, under those standards, the redistricting was subject to strict scrutiny; and that it did not pass muster under that test. The Supreme Court affirmed the decision of the three-judge panel of the United States District Court for the Middle District of North Carolina, giving deference to the lower court's fact-finding, and ruling that the lower court's decision that race was the predominant factor in drawing the two districts in question as majority-minority districts was not clearly erroneous.
- *Curling v. Raffensperger,* 397 F. Supp. 3d 1334 (N.D. Ga. 2019) (granting 2019 preliminary injunction motion). The Lawyers' Committee entered this case in the summer of 2019, about a year after the case had been filed, representing the Coalition for Good Governance and four voters challenging two voting systems employed statewide in Georgia. The district court granted Plaintiffs' motion for a preliminary injunction, enjoining Georgia officials from using the DRE voting machines after January 1, 2020.

The district court ordered additional relief including implementation of a hand-marked paper ballot pilot program, a plan for using paper ballots as backup in case electronic voting machines falter, and a plan for using paper ballots as a backup to electronic poll books. The Plaintiffs continued the case after Georgia officials scrapped the DRE voting machines and instituted Dominion Ballot Marking Devices, although the Lawyers' Committee ceased active participation in summer 2020 and eventually filed a motion to withdraw as counsel, which was granted in December 2020. The Plaintiffs filed successive preliminary injunction motions in 2020, which the district court largely rejected, but did grant narrow relief on two occasions; the Eleventh Circuit stayed one of those orders prior to the November 2020 election. *Curling v. Raffensperger*, 491 F. Supp. 3d 1289 (N.D. Ga. Sept. 28, 2020) (requiring the Secretary of State to generate and transmit an updated hard copy electors list to each county election superintendent at the close of absentee in-person early voting, to be available as a backup in case the electronic poll books fail), *stayed by Curling v. Sec'y of State for Ga*., 2020 WL 6301847 (11th Cir. Oct. 24, 2020); see also *Curling v. Raffensperger*, 493 F. Supp. 3d 1264 (N.D. Ga. Oct. 11, 2020) (granting a preliminary injunction in part and finding that "the modified scanner settings may well still result in the rejection of valid votes and ballots falling through the identified crack in the system by failing to flag visibly clear voter marks for adjudication by a review panel"). Both preliminary injunction orders are currently before the Eleventh Circuit, but the Lawyers' Committee is no longer counsel.

- *Dep't of Com. v. New York*, 139 S. Ct. 2551 (2019). On April 1, 2019, the Lawyers' Committee and pro bono counsel filed a brief for the City of San Jose and the Black Alliance for Just Immigration as amici curiae in Support of Respondents in a case arising from the Southern District of New York, challenging the decision of the Secretary of Commerce to add a citizenship question to the 2020 Census. As noted elsewhere in this report, the Lawyers' Committee was representing these parties in a similar case in the Northern District of California. The Supreme Court ruled that the decision to add the citizenship question violated the Administrative Procedure Act.
- *Donald J. Trump for President, Inc. v. Boockvar*, No. 4:20-cv-02078, 2020 WL 6821992 (M.D. Pa. Nov. 21, 2020), *aff'd*, 830 Fed. App'x. 377 (3d Cir. Nov. 27, 2020). The Lawyers' Committee and co-counsel represented Defendant-Intervenors the Black Political Empowerment Project, Common Cause Pennsylvania, League of Women Voters of Pennsylvania, NAACP Pennsylvania State Conference, and eight impacted voters in opposition to the Trump Campaign's attempt to overturn the November 2020 presidential election results in Pennsylvania. In an amended version of the lawsuit filed on November 15, 2020, the Trump campaign asked the court to order the Department of State to not certify its presidential election results because some counties contacted and permitted voters to fix mistakes with their mail ballot declarations while others did not. After hearing argument on Defendants' motion to dismiss, the district court dismissed the case on November 21, saying that "this Court has been presented with strained legal arguments without merit and speculative accusations... unsupported by evidence." The Trump Campaign appealed immediately to the Third Circuit, which affirmed the district court's dismissal of the case.
- *Donald J. Trump For President, Inc. v. Boockvar*, 493 F. Supp. 3d 331(W.D. Pa. Oct. 10, 2020). The Lawyers' Committee and co-counsel represented Defendant-Intervenors NAACP Pennsylvania State Conference, Common Cause, and the League of Women

Voters of Pennsylvania in this action brought by the Trump Campaign alleging federal and state constitutional violations stemming from Pennsylvania's implementation of a mail-in voting plan for the November 2020 general election. The Plaintiffs sought emergency relief but, on August 23, 2020, the Court found that *Pullman* abstention applied due to unsettled questions of state law being litigated in the *Pennsylvania Democratic Party v. Boockvar* case. Proceedings continued after the Pennsylvania Supreme Court ruled in the *Pennsylvania Democratic Party* case and the parties filed cross motions for summary judgment. On October 10, 2020, the Court granted Defendants' summary judgment motion. The court found that the use of absentee ballot drop boxes is constitutional, that the Secretary's guidance that mail-in ballots should not be rejected where the voter's signature does not match the one on file is constitutional, and that Pennsylvania's restriction on poll watchers to residents of that county is constitutional.

- *Donald J. Trump, et al., v. Jocelyn Benson, et al.,* No. 1:20-cv-01083, ECF 1 (W.D. MI. Nov. 11, 2020). This was a lawsuit filed by the Donald Trump campaign and seven Michigan voters on November 11, 2020 seeking to enjoin the Michigan State Board of Canvassers and the Wayne County Board of Canvassers from certifying the November 3, 2020 presidential election results based upon claims of fraud and other irregularities. On November 13, 2020, the Lawyers' Committee, with the assistance of pro bono counsel, filed a motion to intervene as Defendants on behalf of the Michigan State Conference of the NAACP, Wendell Anthony, Yvonne White and Andre Wilkes. On November 17, 2020, the Court granted the motion to intervene filed by the Lawyers' Committee as well as motions filed by the Democratic Party and the City of Detroit. Subsequently, the Democratic Party Plaintiffs filed a motion to dismiss. The Lawyers' Committee as well as other Defendant parties concurred in the motion to dismiss. On November 19, 2020, the Plaintiffs voluntarily dismissed their lawsuit.
- *Donald J. Trump for President, Inc. v. Montgomery County Board of Elections*, No. 2020-18680 (Montgomery Cty. Ct. of Common Pleas). The Lawyers' Committee and co-counsel filed an amicus brief on behalf of the Pennsylvania NAACP, Common Cause Pennsylvania, the Pennsylvania League of Women Voters, and the Black Political Empowerment Project opposing the Trump Campaign's November 5, 2020 petition for emergency relief. The Trump Campaign sought to invalidate approximately 600 absentee and mail-in ballots cast in the November 2020 election because the voters failed to fill out their address immediately below their signed declaration on the outer ballot envelope. On November 13, 2020, a Montgomery County Court of Common Pleas judge issued an order denying the Trump Campaign's petition and ordering that the absentee and mail-in ballots must be counted. The Trump Campaign filed a notice of appeal to the Commonwealth Court on November 17, 2020, which it withdrew the next day.
- *Donald J. Trump, Michael R. Pence and Donald J. Trump for President, Inc. v. Joseph R. Biden, et. al.*, 2020 WI 91, 951 N.W.2d 568. Candidates and campaign appealed results of recount and determinations of county and state election officials and requesting relief including reversal of election officials' determinations to count certain ballots in certain counties. Lawyers' Committee and pro bono counsel filed motion to appear as amicus curiae on behalf of itself and Wisconsin NAACP in opposition to a challenge of vote counts in Dane and Milwaukee Counties. The case was dismissed and the results affirmed.

- *Feehan v. Wisconsin Elections Comm'n*, No. 20-CV-1771-PP, 2020 WL 7250219 (E.D. Wis. Dec. 9, 2020): Plaintiff Presidential Elector brought suit alleging that a massive transnational conspiracy altered the outcome of the 2020 presidential election and requesting relief including "de-certifying" election results and certifying for Plaintiffs' preferred candidate. Lawyers' Committee and pro bono counsel filed a brief as amicus curiae on behalf of Wisconsin NAACP in support of dismissal. The district court dismissed the case.
- *Gallardo v. State*, 236 Ariz. 84, 336 P.3d 717 (2014), The Arizona legislature passed a law that applied only to the Maricopa County Community College District and added two at-large members to what was previously a five-single district board. The legislature had submitted the change for Section 5 preclearance. The Department of Justice issued a more information letter based on concerns that the addition of two at-large members, in lightof racially polarized voting in Maricopa County, would weaken the electoral power of minority voters on the board. After receiving the more information letter, Arizona officials did not seek to implement the change. Only after the *Shelby County* decision did they move forward, precipitating the lawsuit brought by the Lawyers' Committee and its partners. We could not challenge the change under Section 2, especially becausewe would not have been able to meet the first *Gingles* precondition. Instead we madea claim in state court alleging that the new law violated Arizona's constitutional prohibition against special laws because the board composition of less populous countieswas not changed. Reversing the intermediate court of appeal, the Arizona Supreme Court rejected our argument, holding that the special laws provision of the state constitution was not violated. Unsurprisingly, the Latino candidate who ran for the at-large seat in the first election lost and the two at-large members are white.
- *Ga. Assoc. of Latino Elected Officials v. Gwinnett Cty. Bd. of Registrations and Elections*, No. 1:20-cv-1587-WMR, 2020 WL 6589661 (N.D. Ga. Oct. 5, 2020) (granting motion to dismiss). The Lawyers' Committee and co-counsel represent the Georgia Association of Latino Elected Officials, Georgia Coalition for the People's Agenda, Asian Americans Advancing Justice-Atlanta, New Georgia Project, Common Cause, and two individual voters in this lawsuit. The case challenges election officials' provision of English-only election materials, including paper absentee ballot applications and online voter registration and absentee ballot application portals, to Gwinnett County voters under Sections 203 and 4(e) of the Voting Rights Act. The case arose prior to Georgia's June 2020 primary election when the State mailed English-only absentee ballot applications to Gwinnett County voters. Plaintiffs filed a preliminary injunction motion, which the district denied on the merits on May 8, 2020. *See Ga. Assoc. of Latino Elected Officials v. Gwinnett Cty. Bd. of Registrations and Elections*, --- F. Supp. 3d ----, 2020 WL 2505535 (N.D. Ga. May 8, 2020). The Plaintiffs subsequently amended their complaint to identify a broader scope of English-only materials that election officials are providing to Gwinnett County voters. Defendants subsequently filed motions to dismiss, which the district court granted on October 5, 2020. Plaintiffs appealed the district court's dismissal of the case to the Eleventh Circuit on December 5, 2020. The matter is fully briefed and awaiting argument.
- *Georgia Coalition for People's Agenda v. Deal,* 214 F. Supp. 3d 1344 (S.D. Ga. 2016). The Lawyers' Committee and pro bono counsel represented the Georgia State Conference of the NAACP, Georgia Coalition for the People's Agenda, and Third Sector

Development, Inc. in a case challenging State and local officials' failure to extend the registration deadline in the greater Savannah area following Hurricane Matthew. The Plaintiffs brought a fundamental right to vote claim under the U.S. Constitution and a claim under the National Voter Registration Act. Plaintiffs sought a temporary restraining order and preliminary injunction and prevailed on their constitutional claim. As a result, the court ordered an extension of the registration deadline in Chatham County for the November 2016 election.

- *Georgia Republican Party, Inc., et al. v. Raffensperger, et al.*, No. 1:20-cv-05018-ELR, ECF 1 (N.D. Ga., December 10, 2020). This lawsuit was filed by the Georgia Republican Party, the National Republican Senate Committee and the Kelly Loeffler and David Perdue Senate campaigns, against Brad Raffensperger, the Georgia Secretary of State, the Georgia State Election Board and its individual Board members in their official capacities. The suit challenged the absentee ballot signature match process, and sought to enjoin modifications to the process resulting from a settlement reached in a federal voting rights lawsuit in March 2020. On December 16, 2020, the Lawyers' Committee and pro bono counsel successfully moved for leave to file an amicus brief on behalf of the Georgia Coalition for the People's Agenda and the Georgia State Conference of the NAACP in opposition to the Plaintiffs' motion for emergency injunctive relief. Ultimately, the Court denied relief to the Plaintiffs and dismissed the Plaintiffs' complaint from the bench on December 17, 2020. On December 18, 2020, the Plaintiffs filed a notice of appeal to the 11th Circuit Court of Appeals. However, the Plaintiffs voluntarily dismissed the appeal on January 4, 2021.
- *Ga. State Conf. of the NAACP v. DeKalb Cty. Bd. of Registration and Elections,* 484 F. Supp. 3d 1308 (N.D. Ga. 2020). The Lawyers' Committee and co-counsel represent the Georgia State Conference of the NAACP and the Georgia Coalition for the People's Agenda in an action brought under the National Voter Registration Act and the U.S. Constitution that challenges the Board of Election's purges of DeKalb County voters, including the removal of homeless voters. The challenges took place in late 2019, when the Lawyers' Committee sent the county an NVRA notice letter, and the lawsuit was filed in February of 2020. On September 2, 2020, the district court denied Defendants' motion to dismiss the lawsuit on standing and immunity grounds. The case is ongoing.
- *Georgia State Conference of the NAACP v. Emanuel Cty. Bd. of Comm'rs,* No. 6:16-cv-0021 (S.D. Ga. Oct. 24, 2016): The Lawyers' Committee represented Black Plaintiffs who brought a minority vote dilution claim under Section 2 of the Voting Rights Act concerning the map of Emanuel County School Board districts. The parties negotiated a settlement that resulted in the creation of two majority-minority single-member districts.
- *Georgia State Conference NAACP, et. al. v. Georgia, et, al.*, No. 1:17-cv-1397, 2017 WL 9435558 (N.D. Ga. May 4, 2017), *order granting preliminary injunction in part; Georgia State Conference of the NAACP, et. el. v. Kemp,* et, al., No. 1:17-cv-1397, 2018 WL 2271244 (N.D. Ga. April 11, 2018), *order granting Plaintiffs' motion for attorneys' fees and costs in part.* On April 20, 2017, the Lawyers' Committee, with the assistance of pro bono counsel, filed a lawsuit in the United States District Court for the Northern District of Georgia in Atlanta on behalf of Plaintiffs the Georgia Coalition for the Peoples' Agenda, Asian Americans Advancing Justice-Atlanta, Inc., Georgia State Conference of the NAACP, Third Sector Development, Inc. (parent of the New Georgia Project), ProGeorgia State Table, Inc., and a Fulton County prospective voter. The suit alleged that

the voter registration deadline for federal runoff elections violated Section 8 of the National Voter Registration Act of 1993 and was preempted by federal law. The lawsuit was filed prior to a June 2017 runoff election for the Georgia Sixth Congressional District seat. Under Georgia law, the voter registration deadline for runoff elections required voters to register to vote by the 5th Monday prior to the original election leading to the runoff election in order to be eligible to vote in the runoff election. Under Section 8 of the National Voter Registration Act of 1993, Congress set a maximum voter registration deadline for elections in which a federal candidate was on the ballot and Georgia's runoff voter registration scheme violated the federally mandated maximum voter registration deadline in federal elections. On May 4, 2017, the Court granted almost all of the relief requested by Plaintiffs for the June 2017 runoff election and the prospective individual Plaintiff voter was able to successfully register to vote and voted in the Sixth Congressional District runoff election. Subsequently, the parties resolved the matter with a consent order in which the preliminary injunction entered by the Court was extended to apply to all federal runoff elections in Georgia in the future.

- *Georgia State Conference of NAACP v. Georgia,* 312 F. Supp. 3d 1357 (N.D. Ga. 2018) (denying the 2018 preliminary injunction motion). The Lawyers' Committee and pro bono counsel represented the Georgia State Conference of the NAACP and registered voters in Gwinnett and Henry Counties in a challenge to a 2015 mid-cycle redistricting plan. Plaintiffs alleged that the plan was a racial and partisan gerrymander drawn for the racially discriminatory purpose of preventing candidates supported by minority voters from being elected in two Georgia State House districts. A three-judge panel dismissed our Section 2 discriminatory purpose claim in response to the State's motion to dismiss on the basis that the protected districts were not majority-minority. See *Georgia State Conference of NAACP v. State of Georgia*, 269 F. Supp. 3d 1266 (N.D. Ga. 2017). The Plaintiffs then filed a preliminary injunction seeking emergent relief for the 2018 election cycle. The district court denied the preliminary injunction motion, holding that the Plaintiffs failed to establish a likelihood of success on the merits even though the "evidence that race predominated this redistricting process is compelling" and said there was evidence of partisan gerrymandering. The minority-preferred candidates then proceeded to win the 2018 general elections in both of the contested districts, causing the Plaintiffs to voluntarily dismiss the lawsuit shortly thereafter.
- *Georgia State Conference of the NAACP, et al. v. Gwinnett County Board of Registration and Elections, et al.,* No 1:16-cv-2852, 2017 WL 4250535 (N.D. Ga. 2017). On August 8, 2016, the Lawyers' Committee, along with pro bono counsel, filed a lawsuit on behalf of the Georgia State Conference of the NAACP, Georgia Association of Latino Elected Officials and seven Gwinnett County, Georgia-registered voters. The complaint alleged that the district boundaries for the Gwinnett County Board of Commissioners and the Gwinnett County Board of Education violated Section 2 of the Voting Rights Act of 1965, because they diluted the voting strength of minority voters. In May 2017, the District Court denied Defendants' motions to dismiss and rejected Gwinnett County's argument that claims under Section 2 of the Voting Rights Act are limited to members of a single minority group. Subsequently, Plaintiffs agreed to voluntarily dismiss the action after the 2018 mid-term elections when, after demographic changes in the county led minority candidates to win seats for the first time in the county's history on both the Gwinnett County Board of Education and Board of County Commissioners.

- *Georgia State Conference of NAACP, et. al. v. Hancock County Board of Elections and Registration*, *et al*., No. 5:15-cv-00414, 2018 WL 1583160 (M.D. Ga. 2018). On November 3, 2015, the Lawyers' Committee, along with pro bono co-counsel, filed a voting rights lawsuit in the United States District Court for the Middle District of Georgia in Macon against the Hancock County Board of Elections and Registration (BOER), five individual members of the BOER, and the Hancock County Supervisor of Elections alleging violations of Section 2 of the Voting Rights Act of 1965, Civil Rights Act of 1964, National Voter Registration Act of 1993 and United States Constitution. The Plaintiffs were the Georgia State Conference of the NAACP, the Georgia Coalition for the Peoples' Agenda, and five Black Hancock County voters. This action arose as a result of the challenging and purging of Black voters from the Hancock County voter registration list in advance of the November 3, 2015 City of Sparta municipal election by the majority white Hancock County BOER. After the suit was filed, the district court ordered that all eligible voters be restored to the rolls. The Lawyers' Committee was able to identify 19 such eligible voters (two of whom, unfortunately, had died in the interim). An additional 9 voters were identified as eligible, so long as they produced proof of county address when voting. The case was resolved by a Consent Order which required, among other things, the appointment by the Court of an independent Examiner to oversee the Defendants' compliance with the Consent Order. The monitoring of compliance with the Consent Order by the Examiner is ongoing.
- *Georgia State Conference of the NAACP v. Kemp,* No. 2:16-CV-00219-WCO (N.D. Ga. 2016). The Lawyers' Committee and co-counsel filed suit on September 14, 2016 on behalf of the Georgia State Conference of the NAACP, Georgia Coalition for the People's Agenda and Asian Americans Advancing Justice – Atlanta alleging that Georgia's exact-match voter registration verification scheme violates Section 2 of the Voting Rights Act of 1965 and denies eligible Georgians their fundamental right to vote under the First and Fourteenth Amendments to the United States Constitution. The complaint, filed in the United States District Court for the Northern District of Georgia, concerns Georgia's voter registration verification process as implemented administratively by the Georgia Secretary of State, which required all of the letters and numbers comprising the applicant's name, date of birth, driver's license number or last four digits of the Social Security number to exactly match the same letters and numbers for the applicant in the state's Department of Drivers Service or Social Security Administration databases. This process resulted in the cancellation of applications submitted by African American, Latino, and Asian American applicants at rates significantly higher than White applicants. Shortly before the 2016 general election, the parties reached an agreement that would allow applicants who were placed into pending status due to a matching discrepancy with their name, date of birth, Social Security or Driver's license numbers to show ID when they requested a ballot to resolve the issue. And the Defendant agreed to remove a deadline by which the applicants were required to cure a matching discrepancy. Subsequently, the parties reached a settlement in early 2017. Shortly after reaching this settlement, the Georgia General Assembly passed a new law codifying the exact match process. This led to the filing of a second lawsuit, *Georgia Coalition for People's Agenda, Inc. v. Kemp*, 347 F. Supp. 3d 1251 (N.D. Ga. 2018). That lawsuit is ongoing.

- *Georgia Coalition for People's Agenda, Inc. v. Kemp*, 347 F. Supp. 3d 1251 (N.D. Ga. 2018). This is the second "exact match" suit, filed by the Lawyers' Committee and co-counsel after the Georgia General Assembly passed the new law, codifying the exact match process described above. As part of the exact match process, eligible Georgia citizens who held limited term Georgia driver's licenses before they attained citizenship will also have their voter registration applications flagged as allegedly submitted by a potential non-citizen. Those applications are put into pending status and subject to cancellation after 26 months even though the applicant subsequently attained citizenship because Driver's Services records are not routinely updated to reflect a change in citizenship status. In November 2018, the district court partially granted the Plaintiffs' motion for a preliminary injunction that was focused upon the procedure employed for verifying citizenship at the polling place which resulted in an unreasonable burden on the right to vote. During the 2019 legislative session, the Georgia General Assembly substantially amended the 2017 law, mooting a significant part of the litigation addressing the exact match process relating to the verification of the identity of the applicant (i.e., matching discrepancies related to name, date of birth, driver's license and Social Security records). Because the 2019 amendment did not change the defective citizenship match process, the litigation is now focused upon obtaining permanent relief enjoining the citizenship match process. This litigation is currently in the discovery phase.
- *Georgia State Conference of the NAACP, et al. v. Raffensperger*, No. 1:21-cv-01259-JPB (N.D. Ga., March 29, 2021). The Lawyers' Committee and pro bono counsel filed suit challenging the implementation of SB 202, a law passed by the Georgia General Assembly, which establishes restrictions and limitations on several forms of voting and enhances the power of the State Board of Elections to the detriment of county boards. The new law, among other things, reduces the time in which voters may apply for absentee ballots, imposes new identification requirements for the submitting of absentee ballots, diminishes the utility of drop boxes by limiting their availability to the days and hours of early voting, prohibits mobile voting unless ordered by the Governor in response to an emergency, criminalizes line-warming (the practice of providing food and water to those waiting in line to vote), eliminates the Secretary of State's vote on the State Board of Elections, and adds as Chair a person selected by the General Assembly, and grants the State Board to power to assume the powers of a county board the State Board deems is underperforming. The law was enacted in the wake of elections in 2020 and 2021 which saw voters of color continuing to make use of different methods of voting, and continuing the trend of their increasing political power in the State. The complaint alleges that SB 202 is intentionally discriminatory in violation of the 14th and 15th Amendments and Section 2 of the Voting Rights Act, has a discriminatory effect in violation of Section 2 of the Voting Rights Act, and violates the right to vote.
- *Gill v. Whitford*, 138 S. Ct. 1916 (2018). On September 5, 2017, the Lawyers' Committee and pro bono counsel filed a brief on behalf of the Georgia State Conference of the NAACP, and individuals as amici curiae in Support of Appellees in a case challenging a partisan gerrymander in the State of Wisconsin. The brief argued that a claim of an illegal partisan gerrymander was justiciable. The Supreme Court did not reach the issue, but remanded the matter to give voters the opportunity to prove that they suffered concrete and particularized injuries.

- *Greater Birmingham Ministries v. Sec'y of State for Ala.*, 691 F.3d 1249 (11th Cir. 2020). On February 28, 2018, the Lawyers' Committee, together with the ACLU, the ACLU of Alabama, and Campaign Legal Center, filed a brief as amici curiae in an appeal from the decision of the Northern District of Alabama, which had granted Defendants summary judgment on Plaintiffs' claims that Alabama's photo ID law violated Section 2 of the Voting Rights Act. 284 F. Supp. 3d 1253 (N.D. Ala. 2018). The brief argued that the district court had misapplied the legal standards in reaching its decision. The Eleventh Circuit affirmed the district court's decision.
- *Gwinnett Cty. NAACP v. Gwinnett Cty. Bd. of Reg. and Elections*, 446 F. Supp. 3d 1111 (N.D. Ga. 2020) (denying PI motion). The Lawyers' Committee and pro bono counsel represented the Gwinnett County NAACP, Georgia State Conference of the NAACP, and the Georgia Coalition for the People's Agenda in this lawsuit challenging the Gwinnett County Board of Commissioners' decision to employ one countywide early voting location during the first week of early voting for the March 2020 primary election. The Board of Commissioners limited the number of locations in defiance of a request for additional locations from the Board of Elections. Plaintiffs brought a fundamental right to vote claim under the U.S. Constitution. The district court denied the Plaintiffs' preliminary injunction motion on March 3, 2020, and the Plaintiffs dismissed the action shortly thereafter.
- *Hall, et al. v. Jones Cty., et al.*, No. 4:17-cv-18 (E.D.N.C, filed Feb. 3, 2017). The Lawyers' Committee and pro bono counsel represented Black Plaintiffs who brought a minority vote dilution claim under Section 2 of the Voting Rights Act. The suit challenged the at-large method used to elect the five member Board of Commissioners (governing body) of Jones County, North Carolina. As a result of a favorable settlement reached in this case, the county board is now elected from seven single-member districts, two of which are majority-minority.
- *Hall v. Louisiana*, 884 F.3d 536 (5th Cir. 2018). The Lawyers' Committee had entered this case mid-stream in 2015, when counsel for the Plaintiffs took ill at the outset of trial. Plaintiffs in the case had challenged the districting for election of judges to the city court as violating Section 2 of the Voting Rights Act. After trial, the district court entered judgment for Defendants. 108 F. Supp. 3d 419 (M.D. La. 2015). After the State changed the district lines on the day the district court ruled for Defendants, the case was declared moot, and Plaintiffs moved for vacatur of the judgment, which motion was denied by the district court. 2015 WL 5022568, August 24, 2018. Plaintiffs appealed the denial of their motion for vacatur. The Court of Appeals for the Fifth Circuit affirmed the denial.
- *Hamm v. Boockvar*, No. 600 M.D. 2020 (Pa. Commw. Ct.). The Lawyers' Committee and co-counsel represented amici Pennsylvania NAACP, PA Common Cause, PA League of Women Voters, and Black Political Empowerment Project opposing a petition filed in the Pennsylvania Commonwealth Court by a U.S. House candidate, Pennsylvania State House candidate, and four voters. On November 3, 2020, the Petitioners sought a preliminary injunction barring Pennsylvania officials from permitting allegedly invalidly submitted absentee and mail-in ballots to be cured by the submission of provisional ballots. On November 6, 2020, the Commonwealth Court granted preliminary relief ordering that provisional ballots be segregated pending compliance with state procedures for determining the validity of the provisional ballots. The Court denied all other requests for relief and stayed the matter pending further order of the Court.

- *Hotze v. Hollins*, No. 4:20-cv-3709, 2020 WL 6437668 (S.D. Tex. Nov. 2, 2020), *aff'd*, 2020 WL 6440440 (5th Cir. Nov. 2, 2020). The Lawyers' Committee and pro bono counsel filed a motion to intervene as Defendants on behalf of the Texas State Conference of NAACP Branches, Common Cause Texas, and two individual absentee voters in an action brought by Harris County residents challenging local officials' use of drive-thru early voting locations for the November 2020 election. Plaintiffs brought Equal Protection Clause and Elections Clause claims seeking not only to shut down operational locations but also to invalidate thousands of ballots that had been cast at those locations during the early voting period. The Court ultimately granted Defendant individual voters' motions to intervene and dismissed the action due to a lack of standing on November 2, 2020. The Plaintiffs sought an emergency stay with the Fifth Circuit, which the Fifth Circuit denied. The Plaintiffs are continuing to pursue their appeal with the Fifth Circuit. The appeal is fully briefed and will be argued in early August.
- *Huerena v. Reagan,* No. CV2016-00789 (Ariz. Superior Court, Maricopa Cty. filed June 2, 2016). The Lawyers' Committee and pro bono counsel filed suit challenging the closing of polling places resulting in ordinately long wait times. The matter settled on October 19, 2016, with the County agreeing to develop a time reduction plan for the 2016 and 2020 general elections with the goal of not subjecting more than 5% of voters to a wait of more than an hour.
- *Husted v. A. Philip Randolph Inst.*, 138 S. Ct. 1833 (2018). On September 22, 2017, the Lawyers' Committee and pro bono counsel filed a brief as amici curiae on behalf of Rock the Vote, The Nuns on the Bus of Ohio, The Texas Civil Rights Project, and The Center for Media and Democracy in Support of Respondents, on an appeal to the Supreme Court from a decision of the Sixth Circuit Court of Appeals ruling that Ohio's Supplemental Process for removing voters from the rolls violated the National Voter Registration Act. The brief argued that Ohio's Supplemental Process violated the NVRA, failed to make a reasonable effort to remove ineligible voters from the rolls, and disproportionately disenfranchised minority voters. The Supreme Court reversed the decision of the Sixth Circuit, ruling that Ohio's Supplemental Process did not violate the NVRA.
- *Issa v. Newsom*, No. 2:20-cv-01044 (E.D. Cal. filed May 21, 2020); *Republican Nat'l Comm. v. Newsom*, No. 2:20-cv-01055 (E.D. Cal. filed May 24, 2020). The Lawyers' Committee and pro bono counsel represented Common Cause California and other organizations as amicus in two cases brought by Congressman Issa and the RNC challenging the Governor and Secretary of State of California under 42 U.S.C. § 1983, alleging violations of their First and Fourteenth Amendment rights, the Elections and Electors Clauses, and state law. Specifically, the Plaintiffs challenged the governor's Executive Order N-64-20, which authorized the Secretary of State to mail absentee ballots to every registered California voter to preserve the public health, arguing that changing the "time, place, and manner in which Californians" vote was unconstitutional. The Lawyers' Committee filed an amicus brief arguing in particular the disproportionate impact COVID-19 had on minority populations in California and the burden on the right to vote if Governor Newsom's Executive Order were to be lifted. The case was dismissed after the California legislature passed a new law that permitted the state to mail absentee ballots to all active, registered California voters.
- *Johnson, et. al., v. Benson, et. al.,* No. 20-cv-01098, 2020 WL 6733809 (W.D. MI. November 15, 2020). This was a lawsuit filed by two Michigan voters against Jocelyn

Benson, the Michigan Secretary of State, and Jeannette Bradshaw, the chair of the Michigan State Board of Canvassers, seeking to prevent the certification of the November 3, 2020 presidential election based upon claims of alleged fraud and other irregularities, including that the Secretary of State had allegedly illegally "flooded" the state with absentee ballot applications. After the Lawyers' Committee, with the assistance of *pro bono* counsel, filed a motion to intervene as Defendants on behalf of the MI NAACP and three of its members, the Plaintiffs filed a voluntary dismissal; the motion to intervene was fully briefed or heard by the court.

- *Johnson v. Secretary of State*, --Mich--, 951 N.W.2d 310 (2020). On November 26, 2020, two Michigan voters who identified themselves as "Black Voices for Trump," filed an original action in the Michigan Supreme Court seeking extraordinary *quo warranto* relief to delay or prevent certification of Michigan's presidential election results based upon unfounded allegations of massive fraud and other baseless allegations of improprieties in the November 3, 2020 Michigan presidential election. The relief sought by the Plaintiffs included the seizure of ballots, ballot boxes and poll books; appointment of a special master or legislative committee to investigate claims of fraud related to the counting of absentee ballots at the TCF Center in Detroit, and an injunction preventing Gov. Gretchen Whitmer from certifying Michigan's presidential election results. The Lawyers' Committee and pro bono counsel were granted leave to file an amicus brief on behalf of the Michigan State Conference of the NAACP opposing the Plaintiffs' *quo warranto* action. On December 9, 2020, the Michigan Supreme Court rejected the Plaintiffs' demands for relief in a 4-3 Order of the Court in which the Court noted that it was denying relief "because the Court is not persuaded that it can or should grant the requested relief."
- *Jones v. Boockvar*, No. 717 MD 2018 (Pa. Commw. Ct). The Lawyers' Committee and co-counsel represented the American Civil Liberties Union of Pennsylvania and several individual Pennsylvania voters who cast absentee ballots in the November 2018 election that were rejected because election officials did not receive them by what was, at the time, the nation's earliest absentee ballot return deadline (the Friday before Election Day). Plaintiffs brought this case shortly after the November 2018 election, raising claims under the Pennsylvania State Constitution as well as a fundamental right to vote claim under the U.S. Constitution. In 2019, after the motion to dismiss was fully briefed and argued, the Pennsylvania Legislature enacted Act 77, which not only pushed back the absentee ballot receipt deadline until the close of Election Day but also instituted no-excuse absentee voting in Pennsylvania for the first time. The Plaintiffs voluntarily dismissed the case following the passage of Act 77.
- *Justice for the Next Generation et al. v. Cole et al*, 1:20-cv-0998 (M.D.N.C., Nov. 2, 2020) (consolidated with *Allen et al v. City of Graham et al*, 1:20-CV-0997). The Lawyers' Committee represents a racial justice and local community group and 13 individuals whom the Alamance County (North Carolina) Sheriff's Office and the City of Graham Police Department violently dispersed with pepper spray and arrests on October 31, 2020. Plaintiff organizations had organized the "I am Change" March to the Polls in Graham on the last day of early voting and same-day voter registration in North Carolina, and three days before the November 2020 General Election. Individual Plaintiffs were injured when, without warning and before many marchers had risen to their feet after kneeling for 8 minutes and 46 seconds in memory of George Floyd, GPD officers began

yelling at them to "move" while spraying the marchers indiscriminately with pepper spray. Plaintiffs' claims include Voting Rights Act Sec. 11(b), KKK Act conspiracy (§1985), First and Fourth Amendment as well as state law tort claim against the police chief, Sheriff, and certain personnel from each agency.

- *King, et. al., v. Whitmer, et. al*., No. 2:20-cv-13134-LVP-RSW, 2020 WL 7134198 (E.D. MI, Dec. 7, 2020). This lawsuit was filed by Sidney Powell, L. Lin Wood and allied co-counsel on behalf of six Michigan voters against the Governor of Michigan, Gretchen Whitmer, the Michigan Secretary of State, Jocelyn Benson, and the Michigan Board of State Canvassers. The lawsuit alleged that the Michigan election results should not be certified and that the court should determine that Donald Trump won the election in Michigan. The Lawyers' Committee, with the assistance of pro bono counsel, filed an amicus brief on behalf of the Michigan State Conference of the NAACP in opposition to the Plaintiffs' motion for emergency injunctive and declaratory relief. On December 7, 2020, the District Court entered its opinion and memorandum denying the Plaintiffs' motion for emergency relief. Plaintiffs filed a notice of appeal to the Sixth Circuit Court of Appeals from the denial of their motion for emergency relief on December 8, 2020. Plaintiffs also filed a petition for *certiorari* in the Supreme Court on December 11, 2020. On January 26, 2021, the Sixth Circuit ordered the voluntary dismissal of the appeal at the request of Plaintiffs' counsel. Nevertheless, the Plaintiffs' petition for certiorari is still pending in the United States Supreme Court, although the Court denied the Plaintiffs' motion to expedite consideration of the petition on January 11, 2021. *King v. Whitmer*, No. 20-815, 2021 WL 78064 (S. Ct.). The Defendants subsequently filed motions for sanctions against Plaintiffs' counsel which are still pending in the District Court.
- *Langenhorst, et al. v. Pecore, et al*., 1:2020cv01701 (E.D. Wis.). Voters brought suit alleging violations of state election law in certain counties and requesting relief including excluding vote counts from certain counties. The Lawyers' Committee and pro bono counsel moved to intervene on behalf of Michigan NAACP and individuals. The case was voluntarily dismissed.
- *Lawyers' Comm. for Civil Rights Under Law v. Presidential Advisory Comm'n on Election Integrity*, 265 F. Supp. 3d 54 (D.D.C. 2017), *appeal voluntarily dismissed*, 2017 WL 6945782 (D.C. Cir. Dec. 20, 2017). The Lawyers' Committee and pro bono counsel filed this suit, alleging that the Presidential Advisory Commission on Election Integrity violated the disclosure, notice, and reporting requirements of the Federal Advisory Committee Act. Its motion for a temporary restraining order and a preliminary injunction to require the Commission to hold an in-person meeting with public attendance and to disclose records before the meeting was denied by the district court. *Id.* at 265 F. Supp. 3d at 54. On August 30, 2017, the district court granted the Lawyers' Committee's motion to require the Commission to produce a Vaughn-type index of its documents. The Commission was disbanded, citing the effects of litigation. The Lawyers' Committee voluntarily dismissed its appeal, previously filed, from the denial of its motion for a TRO and preliminary injunction. *Id.* at 2017 WL 6945782 at *1. The district court subsequently denied the Lawyers' Committee's motion to compel compliance with aspects of the order re the Vaughn-type index, because the Commission was defunct, and some of the documents sought were being produced in other litigation. 316 F. Supp. 3d 230 (D.D.C 2018).

- *Lawyers' Comm. for Civil Rights Under Law v. U.S. Dep't of Justice*, 2020 WL 7319365 (D.D.C. Oct. 16, 2020). The Lawyers' Committee and pro bono counsel sued the Department of Justice and the Department of Homeland Security under the Freedom of Information Act to obtain documents pertaining to the creation of the Presidential Advisory Commission on Election Integrity. On October 16, 2020, the U.S. Magistrate Judge issued his Report and Recommendation, recommending that DOJ's motion for summary judgment should be granted as to the adequacy of the office of Solicitor General's search as to DOJ's withholding of information under Exemption 5, denying both the Lawyers' Committee's and DOJ's motions for summary judgment without prejudice as to the adequacy of the Office of Information Policy's search; and denying without prejudice both as to the adequacy of the Homeland's Security search and as to its withholding of information pursuant to Exemptions 5 and 6. The district court has accepted the Magistrate's Report.
- *Lay v. Goins*, No. M2020-00832-SC-RDM-CV (Tenn. Supreme Ct. filed July 7, 2020). The Lawyers' Committee and co-counsel filed an amicus brief on behalf of the Tennessee NAACP and other organizations concerning the chancery court's enlarging eligibility for absentee voting in light of COVID-19. The case concluded with a favorable opinion from the Tennessee Supreme Court that held that vulnerable populations at risk of contracting COVID-19 or individuals taking care of a high-risk person could request absentee ballots in the August and November 2020 elections.
- *League of United Latin Am. Citizens v. Reagan*, No. 2:17-cv-04102-DGC, 2018 WL 5983009 (D. Ariz., Jun. 18, 2018). The Lawyers' Committee and co-counsel, on behalf of the League of United Latin American Citizens Arizona and the Arizona Students' Association, brought this action against the Secretary of State of Arizona and the Maricopa County Recorder alleging that Arizona had a dual voter registration system that violated various constitutional guarantees. The parties settled the lawsuit by consent decree.
- *League of Women Voters of Arizona, et al. v. Reagan*, No. 2:18-cv-02620, 2018 WL 4467891 (D. Az., Sept. 18, 2018). The Lawyers' Committee and co-counsel filed this lawsuit alleging that the Arizona Secretary of State failed to update the voter registration addresses of people who update their address with the Arizona Department of Transportation under §5 of the National Voter Registration Act. Plaintiffs filed a Motion for Preliminary injunction, which was denied based on laches and the *Purcell* doctrine on September 18, 2018. The parties voluntarily dismissed the case in January 2020 pursuant to a settlement agreement.
- *League of Women Voters of Ark. v. Andino*, 497 F. Supp. 3d 59 (D.S.C. 2020) (granting preliminary injunction in part); *voluntarily stayed in part*, 2020 WL 6395498 (4th Cir. Oct. 29, 2020); appeal dismissed and remanded, 2021 WL 927238 (4th Cir, Mar. 11, 2021). The Lawyers' Committee and co-counsel represent the League of Women Voters of South Carolina, The Family Unit, Inc., and two individual voters in an equal protection and procedural due process challenge to a South Carolina statute providing for the rejection absentee ballots due to missing or allegedly mismatched signatures on the absentee ballot envelope. Plaintiffs alleged that South Carolina law failed to provide voters with notice and an opportunity to cure the deficiency. On October 27, 2020, the district court granted Plaintiffs' preliminary injunction motion in part. The district court found a likelihood of success on Plaintiffs' procedural due process and fundamental right

to vote claims as to South Carolina's signature match process, but it denied Plaintiffs' preliminary injunction motion with respect to absentee ballots lacking a signature. The parties subsequently agreed to a partial stay in the Fourth Circuit (staying the order requiring counties to seek judicial preclearance for any proposed signature matching processes), which kept the portion of the district court order preventing the rejection of absentee ballots based on an alleged signature mismatch in place. The Defendants have appealed the district court's preliminary injunction to the Fourth Circuit, which remains pending. The Fourth Circuit held oral argument on the motion on January 25, 2021, and, on March 11, issued an order dismissing the appeal and remanding the matter to the district court for determination of whether the case was moot. Subsequently, the parties entered into a stipulation of dismissal of the matter, with the state acknowledging that, pursuant to current Sourth Carolina law and Directive No. 2020-001,county boards of elections and voter registration are not authorized to and should not match voters' signatures located on absentee ballot voter oaths with voters' signatures on any other document for the purpose of determining the legitimacy of the absentee ballot or any voter's eligibility to cast a legal ballot in any future election in South Carolina.

- *League of Women Voters of Ark. v. Thurston*, No. 5:20-cv-5174, 2020 WL 6269598 (W.D. Ark. Oct. 26, 2020) (denying preliminary injunction motion). The Lawyers' Committee and pro bono counsel represent the League of Women Voters of Arkansas and several individual voters in a federal constitutional challenge to Arkansas law and procedures that require rejecting absentee ballots due to missing or allegedly mismatched signatures or other minor errors on the absentee ballot envelope without providing voters with notice and an opportunity to cure the deficiency. Plaintiffs filed a preliminary injunction motion in September of 2020 seeking relief for the November 2020 election alleging violations of the fundamental right to vote and procedural due process, which the district court denied on October 26, 2020. The district court held that the election was too close for relief to be appropriate. Plaintiffs have subsequently amended their complaint to add individual voters whose absentee ballots were rejected in the November 2020 election, and the parties are in the course of briefing Defendants' motion to dismiss.
- *League of Women Voters of Ohio v. LaRose*, No. 2:20-cv-1638, 2020 WL 6115006 (S.D. Ohio Apr. 3, 2020). The Lawyers' Committee and co-counsel represented the League of Women Voters of Ohio, other organizations, and individual Plaintiffs in a National Voter Registration Act and constitutional challenge to the decision to cut off voter registration more than 30 days before the new primary election date and to hold the primary election on April 28, too little time for Plaintiffs and their members to complete the absentee ballot process and submit their ballots in time to be counted. Plaintiffs filed a temporary restraining order in district court seeking an extension of the voter registration deadline in compliance with the NVRA and an extension of the primary election date on the grounds that it placed a significant burden on the right to vote. The district court denied the Plaintiffs' restraining order finding that Ohio had not violated the NVRA because the primary election date of April 28 was an extension of the original date and because the compressed timeframe for submitting absentee ballots did not burden Ohio voters. The case was voluntarily dismissed.
- *League of Women Voters of Ohio v. LaRose*, No. 2:20-cv-3843, 489 F. Supp. 3d 719 (S.D. Ohio 2020). Lawyers' Committee and co-counsel represented the League of Women Voters of Ohio and other organizations and individual Plaintiffs in a challenge

against Ohio Secretary of State's enforcement of signature-matching requirements and cure procedures for absentee ballot applications and absentee ballots during the COVID-19 pandemic. Plaintiffs filed a preliminary injunction alleging that the signature-matching procedures, or lack thereof, violated the Right to Vote under the First and Fourteenth Amendments, Equal Protection, and Procedural Due Process. The district court denied the preliminary injunction finding that Ohio's signature-matching laws placed only a moderate burden on elections, did not violate procedural due process, and did not violate equal protection because there was little evidence that the differing procedures employed by counties in matching signatures were merely election-related irregularities. The case is pending.

- *League of Women Voters of U.S. v. Newby*, 195 F. Supp. 3d 80 (D.D.C. 2016), *rev'd*, 838 F.3d 1 (D.C. Cir. 2016). The Lawyers' Committee, together with other civil rights organizations, filed suit against the Executive Director of the Election Assistance Commission, challenging his decision to allow Alabama, Georgia, and Kansas to require to add their documentary proof-of-citizenship requirements to the federal mail-in voter registration form applicable to those states. The district court's denial of Plaintiffs' motion for a preliminary injunction against implementation of the Executive Director's decision, *League of Women Voters of U.S. v. Newby*, 2016 WL 4729502 (D.C. Cir. Sept. 9, 2016), was reversed by the Court of Appeals for the District of Columbia Circuit, *Newby*, 838 F.3d 1, 9 (D.C. Cir. 2016). The case is pending.
- *Lichtenstein v. Hargett*, No. 3:20-cv-374, 489 F. Supp. 3d 732 (M.D. Tenn. 2020). The Lawyers' Committee and co-counsel represented several organizations (including Memphis & West Tenn AFL-CIO Central Labor Council, Equity Alliance, Tennessee NAACP, Memphis APRI, and Free Hearts) in a First Amendment challenge to statute criminalizing distribution of absentee ballot applications. This case was filed after a similar claim brought under a different statute that the state later admitted did not govern the prohibited conduct was dismissed. *See Memphis A. Phillip Randolph Inst. v. Hargett*, No. 3:20-cv-00374, 478 F. Supp. 3d 699 (M.D. Tenn. 2020). The district court denied the preliminary injunction on September 23, 2020 on the grounds that Plaintiffs had not shown that the statute prohibiting distribution restricted expressive conduct or political speech protected under the First Amendment. A motion to dismiss is pending.
- *Lopez v. Abbott*, 339 F. Supp. 3d 589 (S.D. Tex. 2018). The Lawyers' Committee and pro bono counsel filed this challenge to Texas's system for electing members of its two highest courts by statewide, at-large, elections as diluting the votes of Latinx voters, in violation of Section 2 of the Voting Rights Act of 1965. After trial, the district court entered judgment for Defendants.
- *Louisiana State Conference of National Association for Advancement of Colored People v. State of Louisiana*, No. 19-479-JWG (M.D. La. June 26, 2020), *appealed*, No. 20-30734 (5th Cir. 2020). Lawyers' Committee and pro bono counsel are challenging the electoral map for Louisiana Supreme Court justices, arguing that the map denies Black voters an equal opportunity to elect justices of their choice, in violation of Section 2 of the Voting Rights Act. Defendants moved to dismiss arguing that the relief sought in the case, the drawing of a second majority Black Supreme Court district in and around Baton Rouge, would infringe on the jurisdiction of a court in the Eastern District of Louisiana, which had previously issued orders relating to the Supreme Court electoral map in

Louisiana. The District Court denied the motion to dismiss, and Defendants appealed to the 5th Circuit where the case is awaiting oral argument on the first week of July.

- *Martin v. Crittenden*, 347 F. Supp. 3d 1302 (N.D. Ga. 2018) (granting preliminary injunction based on missing or incorrect year birth on the absentee ballot envelope); *Martin v. Kemp*, 341 F. Supp. 3d 1326 (N.D. Ga. 2018) (granting preliminary injunction based on the mismatched signature issue), *stay denied sub. nom Georgia Muslim Voter Project v. Kemp*, 2018 WL 7822108 (11th Cir. Nov. 02, 2018), *appeal voluntarily dismissed*, *Martin v. Sec'y of State of Georgi*a, 2018 WL 7139247 (11th Cir. Dec. 11, 2018). The Lawyers' Committee and pro bono counsel represented the Georgia Coalition for the People's Agenda and four individual voters affiliated with the Coalition for Good Governance in this challenge to the rejection of absentee ballots due to mismatched signatures or other minor errors on the absentee ballot envelope. The Plaintiffs obtained preliminary relief on the signature match issue in October 2018. The State sought a stay of the signature match from the Eleventh Circuit, which was denied on November 2, 2018. The State subsequently dismissed its appeal of the signature match decision. The district court rejected Plaintiffs' request for preliminary relief stopping the rejection of absentee ballots due to minor mistakes or omissions on the absentee ballot envelope in an October 2020 order. The Plaintiffs filed another preliminary injunction motion after identifying eligible voters whose absentee ballots were rejected in the November 2020 election, which the district court granted with respect to missing or incorrect year of birth on November 13, 2018. The Plaintiffs voluntarily dismissed the lawsuit in 2019 after the Georgia Legislature adopted H.B. 316 (2019), which made substantial changes to the mail voting process in Georgia.
- *Memphis A. Phillip Randolph Inst. v. Hargett*, 473 F. Supp. 3d 789 (M.D. Tenn. 2020) (denying preliminary injunction as to August 3 primary election on laches grounds); No. 3:20-cv-00374, 478 F. Supp. 3d 699 (M.D. Tenn. 2020) (denying preliminary injunction and motion for reconsideration for November 3 general election with respect to absentee ballot application distribution statute); No. 3:20-cv-00374, 482 F. Supp. 673 (M.D. Tenn. 2020) (denying preliminary injunction for November 3 general election concerning signature-matching claims), *aff'd on other grounds*, 978 F.3d 378 (6th Cir. 2020); No. 3:20-cv-00374, 485 F. Supp. 3d 959 (M.D. Tenn. 2020) (granting preliminary injunction allowing first-time voters who registered by mail to vote absentee), *denying stay pending appeal*, 977 F.3d 566 (6th Cir. 2020), filed May 1, 2020. The Lawyers' Committee and partners filed an action challenging the constitutionality of Tennessee's restrictive absentee ballot statute, a statute on signature verification on absentee ballots in particular the absence of pre-deprivation notice and cure opportunities, a statute criminalizing distribution of absentee ballot applications by anyone other than a member of the election commission, and a statute prohibiting first-time voters who registered by mail from voting absentee in their first election. The Lawyers' Committee represented multiple organizations and individual Plaintiffs. After the decision in *Lay v. Goins*, No. M2020-00832-SC-RDM-CV (Tenn. Supreme Ct. filed July 7, 2020), which expanded the criteria for voting absentee in the state during COVID-19, Plaintiffs dismissed that claim from the district court case. The district court issued multiple opinions (see above) on the other claims. The court denied, on laches grounds, Plaintiffs' preliminary injunction on all claims for the August 6 election. 473 F. Supp. 3d 789 (M.D. Tenn. 2020). The district court denied relief for the November 3 election on Plaintiffs' signature-match claims

which was affirmed by the Sixth Circuit. 482 F. Supp. 3d 673 (M.D. Tenn. 2020), *aff'd on other grounds*, 978 F.3d 378 (6th Cir. 2020). The court also denied relief on the absentee ballot distribution claim. 478 F. Supp. 3d 699 (M.D. Tenn. 2020). The district court granted relief for November 3 on the first-time voters claim and the Sixth Circuit denied Defendants' stay pending appeal. 485 F. Supp. 3d 959 (M.D. Tenn. 2020), *denying stay pending appeal*, 977 F.3d 566 (6th Cir. 2020). Both the signature-match claim and the first-time voter claim are pending.

- *Miss. Immigrants Rights Alliance v. Hosemann*, No. 3:19-cv-831-CWR (S.D. Miss.). The Lawyers' Committee and co-counsel represent the Mississippi Immigrants Rights Alliance and the League of Women Voters of Mississippi in a federal constitutional challenge to Mississippi's proof of citizenship requirement for naturalized citizens and Mississippi's use of the citizenship information contained in the state's driver's license database to require alleged "non-citizen" voters to provide proof of citizenship. The case is ongoing; the Defendants filed an answer to the Plaintiffs' amended complaint and the parties are in the middle of discovery.
- *MOVE Tex. Civic Fund v. Whitley*, No. 5:19-cv-00171 (S.D. Tex. filed Feb. 4, 2019). The Lawyers' Committee and co-counsel filed suit challenging action by the Texas Secretary of State by which he had sent all counties a list of approximately 95,000 persons, whom he had identified as possible non-citizens who had registered to vote, and directed the counties to confirm their status with a goal of removing non-citizens from the voting list. Because the list was created by comparison with the drivers' license database, and because many non-citizens become naturalized citizens after obtaining their drivers' license, the complaint alleged that this process was unconstitutional and discriminated against naturalized citizens in violation of the U.S. Constitution and the Voting Rights Act. The case was transferred and consolidated with a similar pending case, *Texas League of Latin American Citizens v. Whitley,* No. 5:19-cv-00074 (W.D. Tex. filed Jan. 29, 2019). The matter settled with the Secretary of State withdrawing his directive to the counties, agreeing that the counties would take no further action under the directive, that the counties would identify only currently registered voters who registered to vote before they presented documents to the Department of Public Safety indicating their non-U.S. citizenship status, and other procedures.
- *National Urban League, et al. v. Louis DeJoy, et al.*, No. 1:20-cv-02391 (D. Md.), *preliminary injunction denied*, No. CV GLR-20-2391, 2020 WL 6363959 (D. Md. Oct. 29, 2020). The Lawyers' Committee and pro bono counsel represented Plaintiff organizations challenging changes in U.S. Postal Service policy and practice affecting mail voting on right-to-vote, First Amendment, and statutory grounds. The district court denied a motion for preliminary injunction and the case was dismissed voluntarily.
- *National Urban League, et al., v. Wilbur L. Ross*, No. 20-5799-LHK, 489 F. Supp. 3d 939 (N.D. Cal. 2020), *stay pending appeal denied*, 977 F.3d 698 (9th Cir. 2020), *order clarified by* 491 F. Supp. 3d 572 (N.D. Cal. 2020), *stay granted in part and denied in part*, 977 F.3d 770 (9th Cir. 2020), *stay granted* 141 S. Ct. 18 (2020). The Lawyers' Committee and co-counsel challenged the federal government's decision to shorten the timeline for collecting and processing Census data under the Administrative Procedure Act and the Enumeration Clause. Initially, the Plaintiffs obtained a fourteen-day temporary restraining order preventing the government from winding down Census operations prematurely. *See* 484 F. Supp. 3d 802 (N.D. Cal. 2020). The Plaintiffs

subsequently obtained an injunction extending data collection by one month, and data processing by four months. The Defendants sought a stay from the Ninth Circuit. The Ninth Circuit granted a stay as to the deadline for processing the Census, but denied a stay for the data collection deadline. Defendants then sought relief from the Supreme Court. The Supreme Court granted a stay of the entire injunction. By that time, however, data collection had already been extended two weeks beyond the rushed deadline. The case was settled by stipulated order, under which the Census Bureau (1) agreed to continue to process the population numbers for congressional apportionment on an appropriate full timeline and to release those numbers no earlier than April 26, 2021; (2) agreed to include everyone, regardless of citizenship status, in population numbers for congressional apportionment and state-level redistricting; (3) acknowledged that the "illegal alien" citizenship data it was preparing for former President Trump is statistically unfit for use in apportionment and redistricting; and (4) agreed to continue, with the assistance of third parties, to assess the data it obtained during the partially truncated data collection period under the Trump administration and to provide plaintiffs and the public critical information and bi-monthly reports on its reviews of the quality of the 2020 Census data for the next year.

- *Navajo Nation Hum. Rts. Comm'n. v. San Juan Cnty.*, 281 F.Supp.3d 1136 (D. Utah, 2017). The Lawyers' Committee and co-counsel, representing Navajo human rights commission and voters who were members of Navajo Nation, filed suit against San Juan County claiming that the county's voting procedures violated the Equal Protection Clause and the Voting Rights Act, after the county decided to switch to a vote-by-mail system and offer in-person voting in only one place located in the majority-white section of the county. The lawsuit claimed the county did not provide effective language assistance to the region's many Navajo-speaking voters, resulting in unequal voting opportunities. The parties settled and the County agreed to implement various measures aimed at providing effective language assistance and equal opportunities for Navajo voters.
- *New Florida Majority Education Fund, et al. v. Detzner*, No. 4:18-cv-00466-MW-CAS (N.D. Fl., Oct. 10, 2018). The Lawyers' Committee, its partners, the ACLU and the Advancement Project challenged the State's refusal to provide for a reasonable extension of the voter registration deadline for participation in the November general election in the face of the impending catastrophic Hurricane Michael, coupled with reported problems with the state's online voter registration system in the waning days of the registration period. The court conditionally denied plaintiffs' motion for emergency relief and the case was subsequently dismissed.
- *New Va. Majority Educ. Fund v. Fairfax Cty. Bd. of Elections,* No. 1:19-cv-1379-RDA-MSN, Dkt. 17 (E.D. Va. Nov. 1, 2019). The Lawyers' Committee and pro bono counsel represented the New Virginia Majority Education Fund and George Mason University student Amyla Bryant in a federal constitutional challenge brought shortly before the November 3, 2019 election to Fairfax County's rejection of approximately 170 voter registration applications completed by George Mason University students who provided their university address but failed to provide their dormitory address. On November 1, 2019, the Defendants agreed to a consent order that permitted purged voters to cure their registration status prior to Election Day and allowed those who did not cure to cast a provisional ballot that would count in the November 2019 election. The Defendants ceased their purge practices and the Plaintiffs voluntarily dismissed the case.

- *New Va. Majority Educ. Fund v. Va. Dep't of Elections*, No. 1:16-cv-01319-CMH-MSN (E.D. Va. Oct. 20, 2016). The Lawyers' Committee and pro bono counsel filed emergency litigation to extend Virginia's voter registration deadline after the state voter registration website crashed on the final day of registration in advance of the 2016 election. The Court granted a preliminary injunction extending Virginia's statutory voter registration deadline.
- *New Va. Majority Educ. Fund, et al. v. Va Dep't of Election*s, et. al., No. 3:20-cv-00801, 2020 WL 6051855 (E.D. Va. Oct. 14, 2020). The Lawyers' Committee and co-counsel brought suit on behalf of Plaintiff organizations alleging that the sudden unavailability of Virginia's online voter registration system due to technical failure on the last day of voter registration for the 2020 General Election constituted an undue burden on the right to vote, and requesting relief including an extension of the voter registration deadline. Defendant state election officials agreed an extension was warranted. The court granted Plaintiffs' motion for temporary restraining order and emergency injunctive relief, entered a consent decree extending the deadline for voter registration by 48 hours, and dismissed the case.
- *N.C. State Conf. of the NAACP v. N.C. State Bd. of Elections*, No. 20 CVS 5194 (N.C. Super. Wake Cty., Apr. 30, 2020). The Lawyers' Committee and co-counsel represent the North Carolina State Conference of the NAACP and several Black voters in a state constitutional challenge to several North Carolina counties' use of ES&S ExpressVote ballot marking devices (electronic voting machines) that mark ballots with unreadable barcodes. A Wake County Superior Court judge denied Plaintiffs' preliminary injunction motion on August 19, 2020 in an unpublished decision based on lack of likelihood of success on the merits and the difficulty of implementing the requested relief. Plaintiffs' emergency appeals to the North Carolina Court of Appeals and the North Carolina Supreme Court were denied. The State has filed a motion to dismiss Plaintiffs' Complaint in superior court, and have requested that a hearing be calendared on that motion.
- *O'Neil v, Hosemann,* ND Miss. 3:18-cv-00815-DPJ-FKB, fled Nov. 21, 2018. The Lawyers' Committee and co-counsel filed this suit challenging Mississippi's burdensome absentee ballot application procedures for run-off elections. The suit was voluntarily dismissed in 2020 after the Mississippi legislature enacted legislation addressing the problems raised in the complaint.
- *Organization for Black Struggle, et al., v. John R. Ashcroft, et al.*, No. 2:20-cv-4184 (W.D. Mo.), *preliminary injunction granted in part*, No. 2:20-CV-04184-BCW, 493 F. Supp. 3d 790 (W.D. Mo. 2020), *stay pending appeal granted*, 978 F.3d 603 (8th Cir. 2020). The Lawyers' Committee and co-counsel represent Plaintiff organizations challenging more restrictive procedures for no-excuse vote-by-mail than for absentee ballots as an undue burden on the right to vote during COVID-19 pandemic; rejection of mail ballots for immaterial errors or omissions in violation of the Civil Rights Act; and failure to provide notice and opportunity to cure prior to rejection in violation of procedural due process. Preliminary injunction was partially granted allowing vote-by-mail ballots to be dropped off in person for November 2020 election but the order was stayed by Eighth Circuit. The case continues on the remaining claims.
- *Pa. Democratic Party v. Boockvar*, 238 A.3d 345 (Pa. 2020). The Lawyers' Committee and co-counsel represented filed a motion to intervene on behalf of Common Cause, League of Women Voters of Pennsylvania, Make the Road Pennsylvania, and the Black

Political Empowerment Project in this case filed by the Pennsylvania Democratic Party on July 10, 2020 in Pennsylvania Commonwealth Court. The Commonwealth Court denied the motion to intervene but granted amicus status, and the Lawyers' Committee filed an amicus brief with the Pennsylvania Supreme Court. The Pennsylvania Supreme Court took original jurisdiction of the case using its King's Bench authority. On September 17, 2020, the Supreme Court held that the Pennsylvania election code permits the use of absentee ballot drop boxes, that a three-day extension of the mail-in ballot deadline for the November 2020 election only was warranted under the Pennsylvania Constitution, that county boards of elections were not required to provide opportunity to cure mail-in ballots that were filled out incorrectly, that absentee ballots were invalid if not enclosed in a secrecy envelope, and that the poll watcher residency requirement was constitutionally compliant. The Pennsylvania Republican Party Defendant-Intervenors sought a stay of that decision with the U.S. Supreme Court, which was denied by an equally divided Court on October 19, 2020. On October 24, 2020, the Pennsylvania Republican Party then sought a writ of certiorari on the portion of the Pennsylvania Supreme Court's decision extending the absentee ballot receipt deadline to the U.S. Supreme Court, which has not yet made a decision on that cert petition.

- *Poor Bear v. Cnty. of Jackson*, No. 5:14-CV-05059-KES, 2017 WL 52575 (D.S.D., Jun. 17, 2016). The Lawyers' Committee and pro bono counsel sought injunctive and declaratory relief on behalf of members of the Oglala Sioux Tribe requiring Defendants to establish a satellite office for voter registration and in-person absentee voting in the town of Wanblee on the Pine Ridge Indian Reservation. The Court granted Defendants' motion to dismiss on grounds of ripeness.
- *Republican National Committee, et. al., v. State Election Board*, et. al., No. 2020-CV-343319 (Super. Ct., Fulton Cnty, filed Dec. 8, 2020). This lawsuit was filed by the Republican National Committee and the Georgia Republican Party, Inc. against the State Election Board, Brad Raffensperger, the Georgia Secretary of State, and individual members of the State Election Board in their official capacities. The Plaintiffs alleged that poll watchers were not being given adequate access to the areas where the tabulation and processing of ballots were taking place; argued that 24-hour absentee ballot dropboxes were not authorized under Georgia law and should be enjoined; and demanded that video surveillance recordings of absentee ballot dropboxes be made available to the public upon request. The Plaintiffs also sought an order compelling the Secretary of State to issue guidance on the issues relating to the lack of adequate access to pollwatchers and with regard to alleged deficiencies relating to absentee ballot dropboxes. On December 23, 2020, the Lawyers' Committee and pro bono counsel sought to file an amicus brief on behalf of the Georgia State Conference of the NAACP, the League of Women Voters of Georgia and the Georgia Coalition for the People's Agenda opposing the relief sought by the Plaintiffs limiting access to the absentee ballot dropboxes because the organizations and the voters they serve would be prejudiced in the event this relief was granted. The Court denied the relief sought by the Plaintiffs, concluding that the Court lacked subject matter jurisdiction based upon sovereign immunity and dismissed the Plaintiffs' Complaint on December 29, 2020.
- *Rucho v. Common Cause*, 139 S. Ct. 2484 (2019), and *Benisek v. Lamone*, 138 S. Ct. 1942 (2018). On March 8, 2019, the Lawyers' Committee and pro bono counsel submitted a brief on its own behalf as amicus curiae in these cases raising the issue of the

justiciability of partisan gerrymandering claims. The Lawyers' Committee brief addressed the implications of partisan gerrymandering on racial gerrymandering. The Supreme Court held that partisan gerrymandering claims were not justiciable. *Rucho v. Common Cause*, 139 S. Ct. 2484 (2019).

- *Schmitz v. Fulton Cty. Bd. of Registration and Elections*, No. A21A0595 (Ga. Ct. App.), *appealed from* No. 2020CV339337 (Fulton Cty. Sup. Ct.). The Lawyers' Committee and pro bono counsel filed a motion to intervene on behalf of the Georgia State Conference of the NAACP and the Georgia Coalition for the People's Agenda in this mandamus action brought by private Plaintiffs challenging the decision of the Fulton County Board of Registration and Elections not to purge challenged voters shortly before the November 2020 general election. The Plaintiffs argued that Georgia state law required the Fulton County Board to immediately convene challenge hearings to determine whether 14,346 voters should be removed from the rolls. On October 1, 2020, Fulton Superior Court Judge Jane Barwick granted the Defendants' motion to dismiss the lawsuit on the basis that the National Voter Registration Act prohibits the proposed purges. The Petitioners subsequently appealed the Superior Court's dismissal of the case to the Georgia Court of Appeals, which referred the case to the Georgia Supreme Court. The Georgia Supreme Court dismissed the case on January 5, 2021 due to pleadings deficiencies. Plaintiffs-Appellants' motion for reconsideration was denied on February 1, 2021.
- *State ex rel. Ohio Democratic Party v. LaRose*, No. 2020-0388 (Ohio Supreme Ct. Mar. 17, 2020). The Lawyers' Committee and co-counsel filed an amicus brief on behalf of the League of Women Voters and the Ohio A. Philip Randolph Institute in the Democratic Party's lawsuit challenging Ohio Secretary of State Frank LaRose's directive to postpone the primary election to June 2, 2020. The amicus brief did not take a position on the Secretary's authority to issue such a directive but it urged the Ohio Supreme Court to consider extending the voter registration deadline to 30 days before any new election date and in considering a new election date, account for the multi-step, complex absentee ballot process that voters would have to complete in order to get their ballots counted. The case was dismissed when Ohio's legislature passed a new bill setting the election date to April 28, 2020 and mooting out Secretary LaRose's directive.
- *Tenn. State Conf. of NAACP v. Hargett*, 420 F. Supp. 3d 683 (M.D. Tenn. 2019). The Lawyers' Committee and co-counsel represented the Tennessee NAACP and other organizational Plaintiffs in a facial constitutional challenge under the First and Fourteenth Amendments to a newly enacted law that restricted civic engagement organizations from conducting large-scale voter registration drives. The restrictions included draconian criminal and civil penalties for failure to register drives with the Secretary's office, failure to comply with training provisions or the compelled disclosure requirements, and submitting "incomplete applications". Plaintiffs argued that these provisions violated their right to associate and express themselves, were vague, and violated their right to speech and filed a preliminary injunction to enjoin enforcement of the law. The district court granted Plaintiffs' preliminary injunction enjoining the law from taking effect prior to the November 2019 municipal elections. A few months later the legislature repealed these provisions altogether. The case was dismissed and an attorneys' fees motion is pending.
- *Texas League of United Latin Am. Citizens v. Hughs*, 978 F.3d 136 (5th Cir. 2020), and *Texas State Conference of the NAACP v. Abbott*, No. 1:20-cv-1024-RP (W.D. Tex.). The

Lawyers' Committee and pro bono counsel represented the Texas State Conference of NAACP Branches in a federal constitutional and Section 2 Voting Rights Act challenge to Governor Abbott's proclamation prohibiting Texas counties from providing voters with more than one absentee ballot delivery location for the November 2020 election. The proclamation had the effect of closing absentee ballot delivery locations in Harris and Travis Counties that were operating in minority communities. The Plaintiffs filed a preliminary action in the matter but voluntarily dismissed the case after the Fifth Circuit stayed the district court's preliminary injunction in a parallel action filed by LULAC. *See Texas League of United Latin Am. Citizens v. Hughs*, 978 F.3d 136 (5th Cir. 2020). The Lawyers' Committee filed an amicus brief in the Fifth Circuit in the *Hughs* case on behalf of the Texas NAACP.

- *Third Sector Development, Inc. et al. v. Kemp,*, Superior Court of Fulton County, State of Georgia, no. 2014cv252546. The Lawyers' Committee, together with co-counsel, filed this challenge to Georgia's "exact match" process of placing voters on a suspended list, if their registration information did not exactly match driver's license and social security data bases. The action sought a writ of mandamus directing the Secretary of State to determine the eligibility of the voters and place them on the rolls. The matter was dismissed after resolution of the issue in *Georgia State Conference of the NAACP v. Kemp,* No. 2:16-CV-00219-WCO (N.D. Ga. 2016), described above.
- *Thomas v. Bryant*, 366 F. Supp. 3d 786 (S.D. Miss. 2019), *stay pending appeal denied*, 2019 WL 943409 (S.D. Miss. Feb. 26, 2019), *stay pending appeal dismissed*, 756 Fed. App'x. 421 (5th Cir. 2019), *stay granted in part and denied in part*, 919 F.3d 566 (5th Cir. 2019), *aff'd*, 938 F.3d 134 (5th Cir. 2019), *reh'g en banc granted*, 939 F.3d 629 (5th Cir. 2019), *judgment vacated and appeal dismissed sub nom*. *Thomas v. Reeves*, 961 F.3d 800 (5th Cir. 2020). The Lawyers' Committee and co-counsel represented three individual African American Plaintiffs in a minority vote dilution claim under Section 2 of the Voting Rights Act concerning District 22 of the Mississippi State Senate redistricting plan of 2012. Plaintiffs prevailed at trial and the district court ordered a remedial plan. The Defendants sought stays before the Fifth Circuit. The Fifth Circuit denied a stay on the merits but remanded to give the state legislature an opportunity to enact its own remedial plan, which it did. A Fifth Circuit panel affirmed the judgment on the merits and the 2019 August primary and November general elections were conducted under the remedial plan. Joseph Thomas, a Plaintiff and the Black candidate of choice, prevailed in District 22 in the 2019 primary and general elections. The Fifth Circuit, *sua sponte*, heard the case *en banc* and vacated the judgment as moot in 2020 because no regular elections would be held under the remedial plan before the 2020 Census and a new redistricting plan was put in place for the 2023 elections.
- *Trump v. New York*, 141 S.Ct. 530 (Dec. 18, 2020): This case involved the same issues as were involved in *City of San Jose v. Donald Trump*, No. 5:20-5167 RRC-LHK-EMC. Specifically, a coalition of states and localities led by the State of New York had challenged President Trump's Executive Memorandum seeking to exclude undocumented persons from the apportionment count. The Lawyers' Committee and co-counsel filed an amicus brief on behalf of the Plaintiffs it was representing in *City of San Jose v. Trump*. In the brief, Lawyers' Committee argued first that the potential injury in the case, the loss of representation and federal funding, was not speculative and that several Plaintiffs and amici

were likely to be harmed by the Defendants' action; and second that the Defendants' action was unconstitutional. The Supreme Court found that the case was not ripe.

- *Trump v. Raffensperger*, No. 20-343255 (Fulton Cty. Sup. Ct., filed Nov. 4, 2020). The Lawyers' Committee and pro bono counsel submitted a motion to intervene on behalf of the Georgia NAACP, the Georgia Coalition for the People's Agenda, James Woodall, and Helen Butler in support of the Defendants in this election contest filed by Donald J. Trump and the Trump Campaign. The Trump Campaign filed this action on December 4, 2020, and sought to overturn the election results on the basis that the number of illegal votes cast in the November 3, 2020 election exceeded the margin of victory. The Lawyers' Committee filed numerous papers in the case, including a motion for judgment on the pleadings. The Plaintiffs voluntarily dismissed the case on January 7, 2021, the day before trial was to be held. The superior court never ruled on the motion to intervene.
- *Trump v. Wisconsin Elections Commission*, No. 20-CV-1785-BHL, 2020 WL 7318940 (E.D. Wis. Dec. 12, 2020), *affirmed*, 983 F.3d 919 (7th Cir. 2020). Candidate brought suit alleging violations of state election law constituted violation of Electors Clause and requesting relief including voiding election results and "remanding" to Wisconsin Legislature. The Lawyers' Committee and pro bono counsel intervened on behalf of Wisconsin NAACP and individuals in support of dismissal. The case was dismissed and affirmed on appeal by Seventh Circuit.
- *Twelfth Congressional District Republican Committee v. Raffensperger*, No. 1:20-cv-00180-JRH-BKE, 2020 WL 8255193 (S.D. Ga. Dec. 17, 2020). This lawsuit was filed by the Twelfth Congressional District Republican Committee along with three individual Georgia voters against Georgia's Secretary of State Brad Raffensperger, the Georgia State Election Board Members in their official capacities; the Richmond County Board of Elections and individual members of the Board in their official capacities. The Plaintiffs sought to permanently 1) enjoin the use of absentee dropboxes, including in the high interest January 5th Senate runoff elections; 2) enjoin the early processing of mail-in absentee ballots; and 3) enjoin the use of written guidance issued by the Secretary of State relating to the verification of absentee ballot signatures. The Lawyers' Committee and pro bono counsel successfully moved on behalf of the Georgia State Conference of the NAACP and the Georgia Coalition for the People's Agenda to intervene as Defendants in this matter because of the prejudice they and the voters they serve would suffer in the event the relief sought by the Plaintiffs was granted. The Court dismissed the Plaintiffs' claims with prejudice and denied their motion for emergency relief as moot on December 17, 2020 based upon the doctrine of laches, Plaintiffs' lack of Article III standing and principles of abstention. On January 15, 2021, Plaintiffs filed a notice of appeal to the 11th Circuit Court of Appeals from the order and judgment of dismissal.
- *Veasey v. Abbott*, *judgment entered sub nom. Veasey v. Perry*, 71 F. Supp. 3d 627 (S.D. Tex. 2014); *stay denied*, 769 F. 3d 890 (5th Cir. 2014); *mot. to vacate stay denied*, 135 S. Ct. 9 (2014), *aff'd in part, rev'd in part sub nom*, *Veasey v. Abbott*, 820 F.3d 216 (5th Cir. 2016), *aff'd in part, rev'd in part and remanded*, 830 F.3d 216 (5th Cir. 2016) (en banc); *mot. to vacate stay denied,* 136 S. Ct. 1823 (2016), *cert denied sub nom. Abbott v. Veasey*, 137 S. Ct. 612 (2017); *motion for voluntary dismissal granted and motion to dismiss on mootness grounds denied sub nom. Veasey v. Abbott*, 248 F. Supp. 3d 833 (S.D. Tex. 2017); *decision on remand,* 249 F. Supp. 3d 868 (S.D. Tex. 2017); *motion for reconsideration denied*, 265 F. Supp. 3d 684 (S.D. Tex. 2017), *stayed*, 870 F. 3d 387 (5th

Cir. 2017), *rev'd in part and rendered*, 888 F.3d 792 (5th Cir. 2018). The Lawyers' Committee and its co-counsel brought suit on behalf of the Texas State Conference of the NAACP and the Mexican American Legislative Caucus of the Texas State House of Representatives challenging Senate Bill 14 ("SB 14"), which required voters to produce one of a limited number of photo IDs in order to vote in person. The complaint, *Texas State Conference of the NAACP v. Steen*, No. 2:13-cv-00291, was consolidated with other similar complaints under *Veasey v. Perry*, later changed to *Veasey v. Abbott.* After trial, the district court entered judgment in favor of Plaintiffs, ruling that SB 14 resulted in discrimination in violation of Section 2 of the Voting Rights Act in that Black and Latinx voters were less likely to possess the required IDs and more likely to have difficulty in obtaining the IDs than were white voters. The court also found that SB 14 had been enacted with discriminatory intent. On appeal, the Fifth Circuit, sitting *en banc*, affirmed the discriminatory result finding and remanded the discriminatory intent finding for further fact-finding. The Fifth Circuit ordered that an interim remedial order be entered by the district court to remedy the Section 2 results violation, while the intent claim was being litigated. On remand, the district court again found that SB 14 had been enacted with discriminatory intent and enjoined both SB 14 and Senate Bill 5 ("SB 5") which had been enacted by the legislature to effectuate the Fifth Circuit's ruling, largely tracking the terms of the interim remedial order. On appeal, the Fifth Circuit ruled that SB 5 rectified both the results and the intent violations, and that there was, therefore, no further need for additional remedy. The district court subsequently dismissed the case for those same reasons, and the matter is pending argument before the Fifth Circuit Court of Appeals on the defendants' appeal from the district court's order awarding attorneys' fees and expenses to the plaintiffs.

- *Virginia House of Delegates v. Bethune-Hill*, 139 S. Ct. 1945 (2019). This is the second appeal to the Supreme Court in this litigation. The Plaintiffs filed the first appeal in the Supreme Court after the three-judge district court majority rejected their racial gerrymander challenge to twelve Virginia House of Delegates Districts. *Bethune-Hill v. Virginia State Bd. of Elections,* 137 S. Ct. 788 (2017). As a result of that appeal, the Supreme Court remanded the case to the district court for further consideration. After the Plaintiffs were successful on their racial gerrymander claim with regard to 11 of the House of Delegate districts on remand, the Virginia House of Delegates appealed that judgment to the Supreme Court. On February 4, 2019, the Lawyers' Committee, with the assistance of *pro bono* counsel, filed an amicus brief in support of the Plaintiffs-appellees *Virginia House of Delegates v. Bethune-Hill*, No. 18-281, 2019 WL 527481 (2019). In its amicus brief, the Lawyers' Committee argued, *inter alia*, that substantial evidence supported the district court majority's finding that the eleven challenged districts in Virginia's 2011 redistricting were the product of a racial gerrymander in violation of *Shaw v. Reno,* 509 U.S. 630 (1993), and represented the misuse of federal civil rights protections, specifically Section 5 of the Voting Rights Act, 52 U.S.C. § 10301(c). On June 17, 2019, the Supreme Court, with Justice Ginsburg writing the opinion for the majority, dismissed the appeal, concluding that the Virginia House of Delegates lacked standing to represent the state's interests on appeal and did not have standing in its own right to appeal.
- *Wisconsin Voters Alliance, et al. v. Wisconsin Elections Commission, et al.*,No. 2020-AP-001930-OA (Wis. Dec 4, 2020). Voters brought petition alleging violations of state

election law in certain counties and requesting relief including voiding election results. The Lawyers' Committee and pro bono counsel filed a brief as amici curiae on behalf of itself and Wisconsin NAACP in opposition to petition to void election results. The petition was denied.

- *Wittman v. Personhuballah*, No. 14-1504. 136 S. Ct. 1732 (2016). This case involved a challenge to Virginia's Third Congressional District as an unconstitutional racial gerrymander. The Lawyers' Committee and pro bono counsel filed an amicus brief supporting the district court's holding that race was the predominant concern in the original map's creation, in violation of the Constitution. The Supreme Court dismissed the appeal for lack of standing, leaving the district court's opinion in place.
- *Wood v. Raffensperger*, 981 F.3d 1307 (11th Cir. 2020), *aff'g Wood v. Raffensperger*, --- F.Supp.3d ----, 2020 WL 6817513 (N.D. Ga. Nov. 20, 2020). The Lawyers' Committee and pro bono counsel filed a motion to intervene in the district court in this case on behalf of the Georgia State Conference of the NAACP, Georgia Coalition for the People's Agenda, James Woodall, Helen Butler, and Rev. Melvin Ivey, as well as a brief in opposition to a motion for temporary restraining order sought by L. Lin Wood. The Plaintiff sought to overturn the November 2020 presidential election results. The Plaintiff argued that an agreement between the Secretary of State and the Georgia Democratic Party in March 2020 to settle a lawsuit concerning signature-matching rules had unconstitutionally altered Georgia election law as enacted by the Georgia Legislature. The district court did not rule on the motion to intervene. The district court denied the temporary restraining order on November 20, 2020 on several grounds, including standing and a lack of success on the merits. The Plaintiff appealed the decision to the Eleventh Circuit, which unanimously affirmed the district court's decision on December 5, 2020 on standing and mootness grounds. The Lawyers' Committee's clients participated as amicus before the Eleventh Circuit. The Plaintiff has appealed the Eleventh Circuit's decision to the U.S. Supreme Court, which will consider the cert petition at its February 19, 2021 conference.
- *Wood v. Raffensperger*, No. 2020CV342959 (Fulton Cty. Sup. Ct.). The Lawyers' Committee and pro bono counsel filed a motion to intervene on behalf of the Georgia State Conference of the NAACP, Georgia Coalition for the People's Agenda, James Woodall, and Helen Butler in opposition to this November 25, 2020 action seeking to overturn the November 3, 2020 presidential election results. The Petitioner, a Georgia voter unaffiliated with the Trump Campaign, alleged that the election was improperly funded, that numerous illegal absentee ballots were counted due to a deficient March 2020 settlement agreement between the Georgia Democratic Party and the Georgia Secretary of State's office, among other irregularities. The superior court held a hearing on December 7, 2020, and issued an order the next day. The superior court never ruled on the motion to intervene.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

GEORGIA STATE CONFERENCE OF THE NAACP, as an organization; GEORGIA COALITION FOR THE PEOPLE'S AGENDA, INC., as an organization; LEAGUE OF WOMEN VOTERS OF GEORGIA, INC., as an organization; GALEO LATINO COMMUNITY DEVELOPMENT FUND, INC., as an organization; COMMON CAUSE, as an organization; LOWER MUSKOGEE CREEK TRIBE; THE URBAN LEAGUE OF GREATER ATLANTA, INC., as an organization,

Plaintiffs,

v.

BRAD RAFFENSPERGER, in his official capacity of the Secretary of State for the State of Georgia, REBECCA N. SULLIVAN, DAVID J. WORLEY, MATTHEW MASHBURN, and ANH LE, in their official capacities as members of the State Election Board, ALEX WAN, in his official capacity as Chairman of the FULTON County Registration and Elections Board, MARK WINGATE, KATHLEEN RUTH, VERNETTA KEITH NURIDDIN, and AARON JOHNSON, in their official capacities as Members of the FULTON County Registration and Elections Board, ALICE O'LENICK, in her official capacity

Civil Action
Case No. 1:21-cv-1259-JPB

FIRST AMENDED COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

52 U.S.C. § 10301, 42 U.S.C. § 1983; First, Fourteenth and Fifteenth Amendments to the United States Constitution

as Chairman of the GWINNETT County Board of Registrations and Elections, WANDY TAYLOR, STEPHEN W. DAY, and GEORGE AWUKU, in their official capacities as Members of the GWINNETT County Board of Registrations and Elections, PHIL DANIELL, in his official capacity as Chairman of the COBB County Board of Elections and Registration, FRED AIKEN, PAT GARTLAND, JESSICA M. BROOKS, and DARRYL O. WILSON, JR., in their official capacities as Members of the COBB County Board of Elections and Registration,

Defendants.

FIRST AMENDED COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

PRELIMINARY STATEMENT

1. This is a voting rights lawsuit filed pursuant to Section 2 of the Voting Rights Act of 1965 (52 U.S.C. § 10301) and 42 U.S.C. § 1983[1] to protect fundamental rights protected by the First, Fourteenth, and Fifteenth Amendments to the United States Constitution. Plaintiffs seek prospective declaratory and injunctive relief against Brad Raffensperger, in his official capacity as the Georgia Secretary of State; Rebecca N. Sullivan, David J. Worley, Matthew Mashburn, and Anh Le in their official capacities as members of the State Election Board; Alex Wan, in his official capacity as Chairman of the Fulton County Registration and Elections Board; Mark Wingate, Kathleen Ruth, Vernetta Keith Nuriddin, and Aaron Johnson, in their official capacities as Members of the Fulton County Registration and Elections Board; Alice O'Lenick, in her official capacity as Chairman of the Gwinnett County Board of Registrations and Elections; Wandy Taylor, Stephen W. Day, and George Awuku, in their official capacities as Members of the Gwinnett County Board of Registrations and Elections; Phil

1. Plaintiffs' counsel served a 90-day notice letter pursuant to Section 8 of the National Voter Registration Act of 1993 (52 U.S.C. § 20507, 20510) ("NVRA") on Defendants Raffensperger and members of the State Election Board. Once the 90-day notice period expires, Plaintiffs anticipate supplementing their claims with the NVRA claim.

Daniell, in his official capacity as Chairman of the Cobb County Board of Elections and Registration; and Fred Aiken, Pat Gatland; Jessica M. Brooks, and Darryl O. Wilson, Jr. in their official capacities as Members of the Cobb County Board of Elections and Registration, enjoining the enforcement and implementation of Georgia Senate Bill 202 ("SB 202"), an omnibus voter suppression bill passed by the Georgia General Assembly on March 25, 2021 and signed into law the same day by Georgia Governor, Brian Kemp.[2]

2. SB 202 is the culmination of a concerted effort to suppress the participation of Black, Latinx, Asian American, members of indigenous populations and other voters of color by the Republican State Senate, State House, and Governor. In the last two decades, Georgia has undergone demographic change, namely the increasingly large percentage of the electorate comprised of Black voters and other voters of color. As demonstrated by election analyses, Black voters and voters of color usually provide strong support to Democratic candidates. These demographic changes and voting patterns have resulted in corresponding political changes in Georgia. After several cycles of Republican

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2. A copy of SB 202 as passed by the Georgia General Assembly on March 25, 2021 ("SB 202/AP") is available on the Georgia General Assembly's website at this link: https://www.legis.ga.gov/api/legislation/document/20212022/201498 (last checked 5/20/21).

dominance, Democratic statewide candidates almost prevailed in 2018; Democrats then won the race for President in 2020 and two Senatorial contests in 2021. Republican legislators' immediate response was a legislative attempt to suppress the vote of Black voters and other voters of color in order to maintain the tenuous hold that the Republican Party has in Georgia. In other words, these officials are using racial discrimination as a means of achieving a partisan end. This is intentional discrimination in violation of the United States Constitution and Section 2 of the Voting Rights Act.

3. SB 202's restrictions include: (1) onerous and unnecessary ID requirements in order to apply for or return absentee ballots; (2) prohibiting public employees and public entities from sending out unsolicited absentee ballot applications to voters; (3) threatening private individuals and non-public entities with potentially large fines for sending absentee ballot applications; (4) delaying and compressing the time during which a voter can request or submit an absentee ballot; (5) giving county registrars unfettered discretion to limit early voting hours to 9 a.m. to 5 p.m. and to entirely eliminate Sunday early voting; (6) restricting the number of and access to absentee ballot drop boxes; (7) disenfranchising out-of-precinct voters; (8) targeting jurisdictions with large populations of Black voters and other voters of color by stripping the Secretary of State of his vote on the State

Election Board, replacing the Secretary of State with a voting member appointed by the General Assembly, and granting the State Election Board the power to effectively take over county boards; (9) encouraging the submission of "unlimited" numbers of voter challenges; (10) criminalizing the act of providing people waiting in line to vote with food and water; and (11) prohibiting the use of mobile voting units.

4. These changes to Georgia voting laws are intended to suppress the vote of Black voters and other voters of color. In the most recent elections in 2020 and 2021, voters of color used methods such as absentee and Sunday voting in numbers not seen before. In response, the Georgia General Assembly enacted SB 202 to target and limit the means of voting that have been increasingly used by Black voters and other voters of color.

5. Many of these provisions will inevitably lengthen and compound the problem of long lines and delays at polling locations by making absentee mail voting and in-person early voting harder. SB 202 then further burdens and discourages voters from waiting in these long lines to vote by criminalizing the simple act of providing water or snacks to voters while they wait in line. Black voters and other voters of color are disproportionately impacted by long lines and delays at the polls and stand to suffer most (and be disproportionately discouraged

from voting) when charitable organizations can no longer provide even water or snacks to those waiting to vote.

6. SB 202 also threatens the right of voters of color to participate equally in the political process by encroaching on and threatening to eviscerate the power of county election boards—the very boards responsible for protecting that right.

7. The provisions of SB 202, viewed individually and collectively, threaten the fundamental right to vote of all Georgians, but their impact will be felt most intensely by persons of color, which is precisely what the legislature intended.

8. This Court should declare SB 202 unlawful and unconstitutional, and permanently enjoin its implementation and enforcement.

JURISDICTION AND VENUE

9. This Court has jurisdiction of this action pursuant to 28 U.S.C. § 1343(a) and 52 U.S.C. § 10308(f) because it seeks to redress the deprivation, under color of state law, of rights, privileges and immunities secured by the First, Fourteenth and Fifteenth Amendments to the United States Constitution, the Voting Rights Act of 1965 (52 U.S.C. § 10301), 42 U.S.C. § 1983, and the Civil Rights Act of 1964. This Court likewise has jurisdiction pursuant to 28 U.S.C. § 1331 because it arises under the laws of the United States.

10. This Court has jurisdiction to grant both declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201 and 2202.

11. This Court has personal jurisdiction over the Defendants, who are sued in their official capacities only.

12. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b)(2) and under Local Rule 3.1 because, *inter alia*, several defendants reside in this district and this division and a substantial part of the events or omissions giving rise to the claims occurred in this district and division.

PARTIES

13. Plaintiff GEORGIA STATE CONFERENCE OF THE NAACP ("Georgia NAACP") is a non-partisan, interracial, nonprofit membership organization that was founded in 1941. Its mission is to eliminate racial discrimination through democratic processes and ensure the equal political, educational, social, and economic rights of all persons, in particular African Americans. It is headquartered in Atlanta and currently has approximately 10,000 members.

14. The Georgia NAACP works to protect voting rights through litigation, advocacy, legislation, communication, and outreach, including work to promote

voter registration, voter education, get out the vote ("GOTV") efforts, election protection, and census participation.

15. The Georgia NAACP has branches in counties across the state of Georgia that are involved in voter registration, voter assistance, voter education, election protection, grassroots mobilization, and GOTV efforts, including Sunday early voting events, such as "Souls to the Polls."

16. The Georgia NAACP has sought to prevent efforts to suppress or disenfranchise African American voters and has been involved in voting rights litigation in Georgia to vindicate their rights.

17. The Georgia NAACP engages in voter outreach efforts, including voter education on voting in-person during early voting, voting by mail and voting in person on election day.

18. The Georgia NAACP has engaged in GOTV campaigns. One of the key components of these campaigns is providing accurate information regarding mail-in ballots to the Georgia NAACP's membership and the rest of the public.

19. The Georgia NAACP has developed materials and worked with local NAACP branches to educate its members and the public about voting by mail, including providing information concerning the availability and location of mail ballot drop boxes during the 2020 general election and 2021 runoff election cycle.

The Georgia NAACP also developed messaging and materials regarding mail ballot drop box locations in particular counties.

20. The Georgia NAACP has conducted text and phone banking programs and reached out to voters throughout Georgia to encourage voter participation and to educate the public about the voting process, including about voting by mail.

21. The Georgia NAACP has supported in-person voting by providing food and/or drinks to voters who request such while waiting in long lines to vote. This sustenance is provided without regard to political affiliation and without engaging in any speech or conduct that supports a particular candidate while providing food and/or drinks. The Georgia NAACP members provide this sustenance as an expression of their appreciation for voter participation and often accompany their non-verbal acts with a verbal appreciation for voting generally. They seek to do so in future elections cycles, but are chilled by provisions of SB 202.

22. Many of the Georgia NAACP's members have voted by mail in the past and stand to be negatively impacted by the substantial changes to Georgia's vote by mail procedures that have been enacted as part of SB 202. Many more will be impacted by the changes to the availability of absentee ballot drop boxes, changes to early voting times and days and the requirement of a sworn affidavit for

voters who go to the wrong precinct to vote prior to 5 p.m., as set forth in SB 202. Many Georgia NAACP members are at risk of being disenfranchised by the changes in SB 202.

23. The Georgia NAACP has an interest in preventing the disenfranchisement of eligible voters, including its members and voters it may have assisted with navigating the voting process.

24. Due to the substantial changes in absentee voting procedures, absentee ballot drop boxes, early voting periods, restrictions on out-of-precinct voting, criminalization of the expressive act of "line warming" activities such as supplying water and snacks to voters in line and the other changes caused by the enactment of SB 202, the Georgia NAACP will not only have to change its messaging to voters of color about these changes, but the Georgia NAACP will also have to divert considerable resources from its ongoing election protection, advocacy, and GOTV efforts to educate and assist eligible voters.

25. The Georgia NAACP will also have to divert its resources to educate voters about the substantial changes to the mail voting process, and will have to respond to questions from voters who used a mail ballot drop box in the November 2020 election and will be confused by the fact that they are not available outside early voting locations in the future.

26. The Georgia NAACP has traditionally provided transportation to the polls for voters on election day. The Georgia NAACP will have to divert resources to physically transport voters to the county board of elections to drop off their mail ballots or to polling places or early voting locations to vote in person if they cannot vote by absentee ballot. The nature and scope of the Georgia NAACP's voter assistance efforts will need to change if voters do not have access to a drop box or mail ballots are rejected due to the burdensome ID requirements and complicated changes for completing absentee ballot applications and returning absentee ballots.

27. The Georgia NAACP's additional efforts to educate voters whose mail ballots are rejected due to the new ID requirements and other procedures will force the Georgia NAACP to have to divert substantial resources away from core activities such as voter registration and other efforts such as criminal justice work. This is due to the fact that the Georgia NAACP's resources are limited.

28. Plaintiff THE GEORGIA COALITION FOR THE PEOPLE'S AGENDA, INC. ("GCPA") is a Georgia nonprofit corporation with its principal place of business located in Atlanta, Georgia. The GCPA is a coalition of more than 30 organizations, which collectively have more than 5,000 individual members.

29. In addition to its main office in Atlanta, the GCPA has field offices in Athens, Albany, Augusta, Macon, Savannah, and LaGrange, Georgia where it is able to provide outreach and support to voters and prospective voters of color and underserved communities outside of the Metro Atlanta area.

30. During the 2020 elections and the January 5, 2021 runoff cycle, the GCPA's voter outreach efforts were conducted in the greater Metro Atlanta region as well as throughout other areas of Georgia from the aforementioned field offices and covered approximately 88 counties in the state.

31. The GCPA encourages voter registration and participation, particularly among Black and other underrepresented communities of color in Georgia. The GCPA's support of voting rights is central to its mission. The organization has committed, and continues to commit, time and resources to protecting voting rights through advocacy, legislation, communication, and outreach, including work to promote voter registration, voter education, GOTV efforts, election protection, census participation and litigation.

32. The GCPA conducts voter registration drives, voter ID assistance, "Souls to the Polls" GOTV events during Sunday early voting and other GOTV efforts in Georgia that seek to encourage voter participation among Black and Brown voters and voters in historically underserved communities of color. The

GCPA in coalition with other civic engagement organizations in Georgia also participates in voter education and voter empowerment programs.

33. GCPA's voter education and empowerment programs have included, but were not limited to, educating prospective voters about how to register to vote and to confirm their registration status; educating voters about the options to vote in-person during advanced voting, in-person on election day and by mail via absentee ballot; providing information to voters about accessing absentee ballot drop boxes to cast their absentee ballots safely and securely, and helping voters to understand the new voting system implemented for the first-time during the 2020 election cycle statewide.

34. The GCPA has also distributed civic education materials to voters and prospective voters; arranged for rides to the polls for voters; and supported the Georgia Election Protection field program in order to assist voters on the ground near polling sites.

35. GCPA also participates in media interviews, sponsors Public Service Announcements (PSAs), places billboard ads, conducts phone banking, and engages in text message campaigns to educate voters and to encourage participation.

36. GCPA has supported voting by providing food and/or drinks to voters who request such while waiting in long lines to vote. This sustenance is provided without regard to political affiliation and without engaging in any speech or conduct that supports a particular candidate while providing food and/or drinks. GCPA members provide this sustenance as an expression of their appreciation for voter participation and often accompany their non-verbal acts with a verbal appreciation for voting generally. They seek to do so in future elections cycles, but are chilled by provisions of SB 202.

37. The GCPA has an interest in preventing the disenfranchisement of eligible voters who now run the risk of becoming disenfranchised as a result of the new restrictions imposed by SB 202, including substantial and burdensome ID requirements for absentee by mail voting; limitations on early voting days and hours, including Sunday early voting; diminished availability of absentee ballot drop boxes except inside early voting locations during early voting hours, the lack of 24/7 hour access to absentee ballot drop boxes which renders them essentially useless to many voters; the criminalization of "line warming," activities, i.e., providing water and snacks to people in line to vote and other persons in the vicinity of polling locations; and other unreasonably burdensome restrictions imposed by these new voting changes on voters and election officials alike.

38. SB 202 will substantially and negatively impact the GCPA's advocacy efforts now and in the future. This law will inevitably cause Black voters and other voters of color negatively impacted by these new restrictions to lose faith that their votes will be counted on an equal basis as white voters. This sense of futility will likely depress turnout in the future and make it more difficult for the GCPA to carry out its mission of encouraging Black voters, other voters of color and voters in underserved communities to register to vote, vote, and to help protect the rights of other Georgians to vote.

39. Due to the substantial changes in existing Georgia election law and procedures, including the potential imposition of new criminal penalties and significant fines and fees, SB 202 has caused, and will continue to cause, the GCPA to divert a portion of its financial and other organizational resources to educating voters about these changes and assisting voters facing these new restrictions and burdens.

40. As a result of the enactment of these new restrictions on voting in Georgia, the GCPA has, and will continue to have, fewer resources to dedicate to its other organizational activities, including voter registration drives, GOTV efforts and other projects, unless the Court enjoins implementation and enforcement of these new laws.

41. Plaintiff LEAGUE OF WOMEN VOTERS OF GEORGIA, INC. ("League") is a nonpartisan political organization that has worked for the last 101 years to ensure that every person has the desire, the right, the knowledge and the confidence to participate in our democracy. The League's 13 local organizations and nearly 700 members are dedicated to their mission of empowering voters and defending democracy.

42. From the League's inception, members have worked for good government by studying issues, advocating for reforms, and, through the League's Observer Corps, observing and reporting on the work of all levels of government. The League is committed to registering voters, regardless of their political affiliation, and is particularly proud of its work, with community partners, in registering new American citizens at citizenship ceremonies. The League is also dedicated to voter education, through both candidate forums and the Vote411.org voter guide. Many League members also assist with GOTV efforts, poll watching, and serving as vote review panelists.

43. As part of its mission, the League advocates for expansion of voting opportunities, including through absentee by mail voting, early in-person voting and election day voting. The League expends significant resources in furtherance of its mission, including by organizing voter registration drives, educating the

public about the voting process, and assisting voters who have questions or need help navigating the voting process. The League has seen a substantial increase in the number of its members and other individuals who turned out to vote by mail and during early in-person voting during the 2020 election cycle and January 5, 2021 Senate runoff elections.

44. The League has supported voting by providing food and/or drinks to voters who request such while waiting in long lines to vote. This sustenance is provided without regard to political affiliation and without engaging in any speech or conduct that supports a particular candidate while providing food and/or drinks. The League members provide this sustenance as an expression of their appreciation for voter participation and often accompany their non-verbal acts with a verbal appreciation for voting generally. They seek to do so in future elections cycles, but are chilled by provisions of SB 202.

45. As a result of the risk of disenfranchisement due to new ID requirements for absentee by mail voting, the League must divert more resources toward educating voters about these new requirements, including, but not limited to, warning them of the risk of disenfranchisement if they fail to provide the required ID and other required information when applying or absentee ballots and when returning the ballots; answering questions from members of the public about

these new voting restrictions; and explaining how they impact their right to vote. The League will need to devote significant staff time and funds to update standard training materials and informational booklets to reflect these sweeping changes.

46. The League must divert these resources away from its regular advocacy, voter registration, fundraising, and other activities, affecting its ability to operate and function with respect to its normal activities.

47. Plaintiff GALEO LATINO COMMUNITY DEVELOPMENT FUND, INC. ("GALEO LCDF"); is a non-partisan, nonprofit corporation. GALEO LCDF is one of the oldest, largest, and most significant organizations promoting and protecting the civil rights of Georgia's Latinx community. GALEO LCDF has approximately 165 members across Georgia.

48. GALEO LCDF's headquarters is located in Norcross, which is in Gwinnett County, and a substantial amount of GALEO LCDF's civic engagement, voter registration and GOTV work takes place in Gwinnett County and other Georgia counties. This work includes organizing voter education, civic engagement, voter empowerment and GOTV events and conducting voter registration drives. After Gwinnett County became a covered jurisdiction for Spanish under Section 203 in December 2016, GALEO LCDF has worked also

with the Gwinnett County Board of Registration and Elections in an effort to bring its procedures and election materials into compliance with the law's requirements.

49. During the 2020 election cycle, GALEO LCDF also worked to address challenges facing Gwinnett County's Limited English Proficiency ("LEP") Spanish speaking voters as a result of the impact of the COVID-19 pandemic.

50. GALEO LCDF sent bilingual mailers to Latinx Gwinnett County voters with information about the presidential primary as well as additional mailers after the primary was postponed due to COVID-19.

51. GALEO LCDF also sent several rounds of bilingual mailers to all Latinx Georgia voters for both the General Election and the January 5, 2021 runoffs. GALEO LCDF also ran paid advertisements on Spanish media (radio & TV) to promote voting and educate voters about voting for both elections.

52. Due to the sweeping changes to many facets of voting that stand to disenfranchise Latinx, language minority voters and voters of color, GALEO LCDF will be forced to divert resources from its voter registration, existing voter education programs, GOTV activities and other programs to assist voters, particularly LEP voters and new Americans, in being able to navigate the many changes and challenges of SB 202 that will make it more burdensome for them to vote by absentee ballot, during early voting and in person on Election Day.

53. Plaintiff COMMON CAUSE is a nonprofit corporation organized and existing under the laws of the District of Columbia. It is one of the nation's leading grassroots democracy-focused organizations and has over 1.2 million members nationwide and chapters in 35 states, including 18,785 members and supporters in Georgia. Since its founding in 1970, COMMON CAUSE has been dedicated to the promotion and protection of the democratic process, including the right of all citizens to vote in fair, open, and honest elections. COMMON CAUSE, at the national level and in Georgia, conducts significant nonpartisan voter-protection, advocacy, education, and outreach activities to ensure that voters are registered and have their ballots counted as cast.

54. In Georgia, COMMON CAUSE has increased its efforts in the areas of election protection, voter education, and grassroots mobilization around voting rights in the state. COMMON CAUSE works on election administration issues with its coalition, much of which is represented by the other plaintiffs in the instant lawsuit.

55. COMMON CAUSE, alongside other partners in Georgia, created a program to help recruit volunteers to monitor local board of elections meetings. COMMON CAUSE also works with these partners in election protection efforts during both midterm and presidential elections. Through its volunteer recruitment

for poll monitors, COMMON CAUSE in Georgia monitors an average of five polling locations in 22 counties for a total of 110 polling places. COMMON CAUSE in Georgia additionally engages in online petition drives, soliciting signatures from its members and supporters urging government officials to take certain actions.

56. COMMON CAUSE in Georgia also works directly with voters who cast provisional ballots to help ensure their ballots can be counted.

57. COMMON CAUSE has supported voting by providing food and/or drinks to voters who request such while waiting in long lines to vote. This sustenance is provided without regard to political affiliation and without engaging in any speech or conduct that supports a particular candidate while providing food and/or drinks. COMMON CAUSE members provide this sustenance as an expression of their appreciation for voter participation and often accompany their non-verbal acts with a verbal appreciation for voting generally. They seek to do so in future elections cycles, but are chilled by provisions of SB 202.

58. During the 2020 election cycle, COMMON CAUSE in Georgia assisted some 6,000 voters who cast provisional ballots to cure those ballots so they could be counted—most were cast because the voter appeared at the wrong precinct. As a result of the enactment of SB 202, COMMON CAUSE will divert

resources that it would have applied to other organizational and programmatic resources toward helping voters resolve provisional ballot issues, including provisional ballots cast due to voters appearing at the wrong precinct, often through no fault of their own.

59. Plaintiff LOWER MUSKOGEE CREEK TRIBE is a state-recognized tribe located in Grady County on the southwest border of Georgia. The tribal government is located in the old tribal town of Tama, which is located in Whigham, Georgia. The tribe has an enrollment of approximately 2,700 members, most of whom live in rural southwest Georgia and northern Florida within a 150-mile radius to Whigham. The tribe operates a civics education program for its members to encourage them to participate in the political process. The tribe's members are disproportionately poor and likely to be affected by SB 202's cutback on voting by mail and criminalization of providing food and water to voters in line at the polls.

60. The United States Census Bureau's 2019 Five-Year American Community Survey (ACS) estimates indicate that 41.6% of American Indians in Georgia do not have a computer at home and that American Indians in Georgia are 155% less likely than white Georgians to have a computer at home. This makes it more likely that Georgia's American Indian voters, including members of the

LOWER MUSKOGEE CREEK TRIBE, will face significantly higher burdens complying with SB 202's absentee ballot provisions than white voters because they are less likely to have a computer, printer scanner or internet access at home. These resources are needed to obtain and print an absentee ballot application from the websites of the Secretary of State or county registrar and to print necessary ID documentation for the absentee ballot application and to include when returning a voted absentee ballot to their county registrar's office.

61. Plaintiff, THE URBAN LEAGUE OF GREATER ATLANTA, INC. ("ULGA"), began operations in Atlanta in 1920 as an affiliate of the National Urban League which had been founded 10 years earlier as a multi-racial nonprofit organization working to promote civil rights and justice for people of color. The mission of the ULGA was originally focused upon ending segregation and the oppression of African Americans through securing voting rights and equal access to education and economic opportunity for all people.

62. Building on that legacy, the ULGA now helps citizens work toward economic stability through programs in education, entrepreneurship, jobs and training, housing, and community support and it has continued to strengthen its advocacy efforts for racial equity in the political process and in criminal justice.

63. For many years, the ULGA and its public-private partners have sustained a robust effort to promote and protect access to the ballot box in Georgia. In 2020, the ULGA ramped up its GOTV initiatives through advocacy, mass communications, and direct outreach to citizens to encourage voter registration, voter education, election protection, and census participation.

64. In tandem with its Young Professionals group and a variety of corporate and nonprofit partners, the ULGA conducted GOTV information drives on Georgia's options for in-person early voting, voting by mail and drop-box, and voting on election day. This included widespread print and broadcast PSAs, social media outreach, phone banking, and interviews with media targeted to various audiences.

65. Having the ability to vote by mail and via secure drop boxes markedly increased voter participation overall, and especially among younger Georgians, seniors and those working jobs that limited their options for early in-person or day of elections voting. These measures also proved to increase voting among communities of color.

66. However, SB 202 purposefully makes it harder for Black Georgians and other Georgians of color served by the ULGA's civic engagement, voter education and GOTV initiatives to cast ballots that will count as votes.

67. As a result, the ULGA's work to re-educate voters about the new voting changes mandated by SB 202 will require a massive undertaking in order to assist voters in navigating the new restrictions, including those impacting drop box availability, ID requirements for absentee voting, and the new limitations on out of precinct voting, among other changes brought about with the enactment of SB 202.

68. The ULGA will be forced to divert resources from its regular and emergency programs to find ways to reach voters who have the right to participate in democracy but cannot overcome the barriers placed by SB 202. The ULGA will need to apply additional resources to identify those who need IDs, transportation, and absentee ballots along with ways to help voters ensure that their absentee ballots are counted.

69. Further, the ULGA will have to determine how it can offer comfort to voters standing in the long lines (possibly in inclement or hot weather) without violating SB 202. SB 202 will undoubtedly create long lines in urban enclaves or rural areas with limited polling places, which can discourage voter participation.

70. In fact, SB 202 recreates many of the very impediments that elections officials successfully dismantled to make the 2020 fall elections and 2021 runoffs so well executed.

71. Defendant BRAD RAFFENSPERGER is the Secretary of State of the State of Georgia and a non-voting *ex officio* member of the State Election Board. Pursuant to O.C.G.A. § 21-2-50, Secretary Raffensperger has broad authority as the state's chief election official in the administration and implementation of Georgia's election laws and regulations. These duties include, but are not limited to, training county registrars and superintendents; receiving, computing and certifying election returns; providing information to citizens regarding voter registration and voting; maintaining the state's active and inactive voter registration lists; certifying candidates as required by law; preparing and publishing all notices and advertisements as required by Georgia law regarding the conducting of elections; providing blank election forms to superintendents as other supplies; creating and programming ballots; and other duties as required by law. Secretary Raffensperger is also responsible for coordinating Georgia's compliance with the National Voter Registration Act of 1993 (52 U.S.C. § 20507, *et seq*). SB 202 specifically tasks the Secretary of State with numerous responsibilities, including responsibility for making available Georgia's absentee ballot application form, which requires the voter to provide their date of birth, a Georgia driver's license or identification card (or copies of other specified documents). Secretary Raffensperger is sued in his official capacity.

72. Defendants REBECCA N. SULLIVAN, DAVID J. WORLEY, MATTHEW MASHBURN, AND ANH LE are voting members of the State Election Board and are named herein in their official capacities.

73. The duties of members of the State Election Board include: promulgating rules and regulations to "obtain uniformity" in the practices and proceedings of elections officials, "as well as the legality and purity in all . . . elections"; "formulating, adopting, an orderly conduct of primaries and elections"; promulgating rules and regulations to "define uniform and nondiscriminatory standards concerning what constitutes a vote and what will be counted as a vote"; and investigating frauds and irregularities in elections. *See* O.C.G.A. § 21-2-31. SB 202 specifically tasks the State Election Board with numerous responsibilities, including enforcing compliance with the new voter challenge provisions. SB 202, §§ 15 & 16.

74. Defendant ALEX WAN is the Chairman of the FULTON County Registration and Elections Board and is named herein in his official capacity. Defendants MARK WINGATE, KATHLEEN RUTH, VERNETTA KEITH NURIDDIN, and AARON JOHNSON are members of the FULTON County Registration and Elections Board and are named herein in their official capacities.

75. The FULTON County Registration and Elections Board is responsible for administering elections in Fulton County. *See, e.g.*, O.C.G.A § 21-2-40(b) (designating boards of elections and registration with powers and duties of election superintendent and board of registrars and assigning it powers related to conduct of primaries and elections, voter registration, and absentee-balloting procedures); *id*. § 21-2-70 (describing the powers and duties of superintendents); *id*. § 21-2-381 (describing duties in relation to absentee ballot applications); *id*. § 21-2-384 (describing duties in relation to preparing and delivering absentee mail-in ballots). SB 202 specifically tasks county election officials with numerous responsibilities, including enforcing the new identification requirements for voting by absentee ballot, issuing absentee ballots during the compressed distribution periods, and holding hearings on voter registration challenges. SB 202 §§ 15, 16, 25.

76. Defendant ALICE O'LENICK is the Chairman of the GWINNETT County Board of Registrations and Elections and is named herein in her official capacity. Defendants WANDY TAYLOR, STEPHEN W. DAY, and GEORGE AWUKU are Members of the GWINNETT County Board of Registrations and Elections and is named herein in their official capacities.

77. The GWINNETT County Board of Registrations and Elections is responsible for administering elections in Gwinnett County. *See, e.g.*, O.C.G.A

§ 21-2-40(b) (designating boards of elections and registration with powers and duties of election superintendent and board of registrars and assigning it powers related to conduct of primaries and elections, voter registration, and absentee-balloting procedures); *id*. § 21-2-70 (describing the powers and duties of superintendents); *id*. § 21-2-381 (describing duties in relation to absentee ballot applications); *id*. § 21-2-384 (describing duties in relation to preparing and delivering absentee mail-in ballots). SB 202 specifically tasks county election officials with numerous responsibilities, including enforcing the new identification requirements for voting by absentee ballot, issuing absentee ballots during the compressed distribution periods, and holding hearings on voter registration challenges. SB 202 §§ 15, 16, 25.

78. Defendant PHIL DANIELL is the Chairman of the COBB County Board of Elections and Registration and is named herein in his official capacity. Defendants FRED AIKEN, PAT GARTLAND, JESSICA M. BROOKS, and DARRYL O. WILSON, JR. are Members of the COBB County Board of Elections and Registration and are named herein in their official capacities.

79. The COBB County Board of Registrations and Elections is responsible for administering elections in Cobb County. *See, e.g.*, O.C.G.A § 21-2-40(b) (designating boards of elections and registration with powers and duties of

election superintendent and board of registrars and assigning it powers related to conduct of primaries and elections, voter registration, and absentee-balloting procedures); *id*. § 21-2-70 (describing the powers and duties of superintendents); *id*. § 21-2-381 (describing duties in relation to absentee ballot applications); *id*. § 21-2-384 (describing duties in relation to preparing and delivering absentee mail-in ballots). SB 202 specifically tasks county election officials with numerous responsibilities, including enforcing the new identification requirements for voting by absentee ballot, issuing absentee ballots during the compressed distribution periods, and holding hearings on voter registration challenges. SB 202 §§ 15, 16, 25.

STATEMENT OF FACTS

Georgia's History of Racial Discrimination in Voting

80. Georgia has a long history of racially discriminatory voting practices. As one federal judge has found:

> The history of the states [sic] of segregation practice and laws at all levels has been rehashed so many times that the Court can all but take judicial notice thereof. Generally, Georgia has a history chocked full of racial discrimination at all levels. This discrimination was ratified into state constitutions, enacted into state statutes, and promulgated in state policy. Racism and race discrimination were apparent and conspicuous realities, the norm rather than the exception.

Brooks v. State Bd. of Elections, 848 F. Supp. 1548, 1560 (S.D. Ga. 1994). *See also, e.g.*, *Georgia State Conference of the NAACP v. Fayette County Bd. of Comm'rs*, 950 F.Supp.2d 1294, 1314-16 (N.D. Ga. 2013); *Johnson v. Miller*, 864 F. Supp. 1354, 1379-80 (S.D. Ga. 1994), *aff'd and remanded*, 515 U.S. 900 (1995) (noting that "we have given formal judicial notice of the State's past discrimination in voting, and have acknowledged it in the recent cases").

81. As a result of this extensive and well-documented history of discrimination against racial minorities, Georgia was a "covered jurisdiction" under Section 5 of the Voting Rights Act, which required Georgia to get approval by the federal government for any changes to its election practices or procedures. This approval process allowed the federal government to review the proposed change to determine that it "neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race or color." 52 U.S.C. § 10304.

82. During the time that Section 5 of the Voting Rights Act applied, the federal government was required to intervene in Georgia's racially discriminatory voting practices 187 times. And, as the U.S. Commission on Civil Rights, a bipartisan, independent agency found, among the states subject to preclearance under the Voting Rights Act, Georgia was the only state that had implemented

voting restrictions in *every category* the Commission examined: strict requirements for voter identification; documentary proof of U.S. citizenship; purges of voters from voter registration rolls; cuts to early voting; and a raft of closed or relocated polling locations.

83. After the Supreme Court's decision in *Shelby County v. Holder*, 570 U.S. 529 (2013), invalidated the coverage provision that subjected Georgia to the preclearance requirement of the Voting Rights Act, Georgia immediately began to impose restrictions on voting rights designed to suppress Black votes and votes by other people of color. Some examples of the many such restrictions are as follows.

84. ***Exact Match Registration Requirements:*** Starting shortly before the 2008 election, the Georgia Secretary of State's office began implementing a policy where information on voter registration forms was compared to records on file with the Georgia Department of Drivers Services or Social Security Administration. If the information did not match exactly—*e.g.*, if even a hyphen or apostrophe were different or an extra space was added—the registration was not accepted and the burden passed to the applicant to cure the "problem." The U.S. Department of Justice objected to this "exact match" protocol, concluding that the "flawed system frequently subjects a disproportionate number of African-American, Asian, and/or Hispanic voters to additional and, more importantly,

erroneous burdens on the right to register to vote." In 2010, despite repeated warnings that the protocol would disproportionately burden eligible minority applicants, the Georgia Secretary of State's office implemented a revised version of the "exact match" system. This revised system was codified into law by H.B. 268 and remained in effect until civil rights and other groups brought extensive litigation that largely ended the practice in 2019.

85. ***Photo Identification Requirements and Barriers:*** In 2005, Georgia adopted a strict photo identification requirement for voting. The 2005 photo ID law required individuals lacking photo ID to pay $20 for a photo ID card or to sign an affidavit declaring indigency. Only after a federal court enjoined its original photo ID bill did the Georgia Legislature revise its photo ID law in 2006 to allow for more equal access to the necessary photo ID.

86. While Georgia state law now allows for a "free" state-issued ID for those who do not have one, driver's license offices in Georgia's Black Belt—21 contiguous and predominantly Black rural counties—are open two days per week or fewer. Additionally, studies show that the actual cost for "free IDs" typically ranges from $75 to $175 after factoring in documentation, travel and waiting time.

87. ***Voter Purges:*** Georgia aggressively purges registered voters from the voter rolls at a rate much higher than most other states. For example, Georgia

purged approximately 1.5 *million* voters between the 2012 and 2016 elections alone. And in 2019 alone, more than 313 voters were removed on the grounds that they had moved—despite a subsequent analysis that showed that over 60% of the purged voters had not moved, and that the purges predominately impacted non-white voters in the Atlanta metropolitan region. Voters are frequently removed merely because they did not manage to vote in prior elections, and these purges disproportionately affect Black voters and voters of color.

88. ***Criminal Investigations:*** Georgia has launched numerous criminal investigations against voting organizers, focusing on those who register Black voters and other voters of color. For example, in 2010, the Georgia Secretary of State's office aggressively pursued an investigation of a dozen Black voting organizers in Brooks County that led to a criminal prosecution. The investigation followed the election of the county's first ever majority-Black school board, which was catalyzed by GOTV activists. None of the organizers was convicted even though they were initially charged with more than 100 election law violations carrying penalties of more than 1,000 combined years in prison. The Georgia Attorney General subsequently issued an opinion saying that the organizers' alleged crime—mailing absentee ballots by a third party—was permissible under state law (although SB 202 now tries to criminalize similar actions).

89. ***Closures and Relocations of Polling Places, and Long Lines to Vote:*** Counties throughout Georgia have aggressively closed and relocated polling locations despite an overall increase in registered voters. One study found that 10% of Georgia's polling locations have closed since 2013. Such closures and relocations have disproportionately occurred in communities of color.

90. As a result in part of these closures, Black voters and other voters of color have been forced to wait in increasingly long lines in order to vote. *See, e.g.*, Stephen Fowler, *Why Do Nonwhite Georgia Voters Have To Wait In Line For Hours? Too Few Polling Places*, Georgia Public Broadcasting, Oct. 17, 2020, *accessible at* https://www.npr.org/2020/10/17/924527679/why-do-nonwhite-georgia-voters-have-to-wait-in-line-for-hours-too-few-polling-pl. According to one study, Black voters are likely to wait 45% longer in line to vote than white voters, with Black Georgians waiting an average of nearly one hour to vote while white voters wait only six minutes. In 2020, Black voters in Fulton County waited over five hours to vote in primary elections, and some Fulton County voters waited more than ten hours to cast a ballot during early voting for the general election. Numerous studies have consistently shown that long lines deter people from voting.

91. SB 202 is the most recent incarnation of this long history of discriminatory voting practices in Georgia.

Racial and Ethnic Demographics of Voting in Georgia

92. The Secretary of State of Georgia maintains detailed records as to the racial demographics of voting. As a result, the Georgia legislature and its elected officials are well aware of the implications of making decisions as to voting on racial and ethnic minorities.

93. In every presidential election since 2004, the share of registered voters who are white has decreased in Georgia: from 68% in 2004, to 63% in 2008, to 59% in 2012, to 56% in 2016, to 53% in 2020. During that same period, the cumulative share of registered Black, Latinx and Asian American/Pacific Islander ("AAPI") voters and voters who are members of indigenous tribes has increased.

94. The percentage of the vote that the Republican Presidential candidate has received in Georgia has decreased in every election since 2004 with the exception of 2012.

95. The 2018 statewide election in Georgia demonstrated how fragile the Republican Party's hold on the state was. While Republican candidates won the races for Governor, Lieutenant Governor, Secretary of State, and Attorney

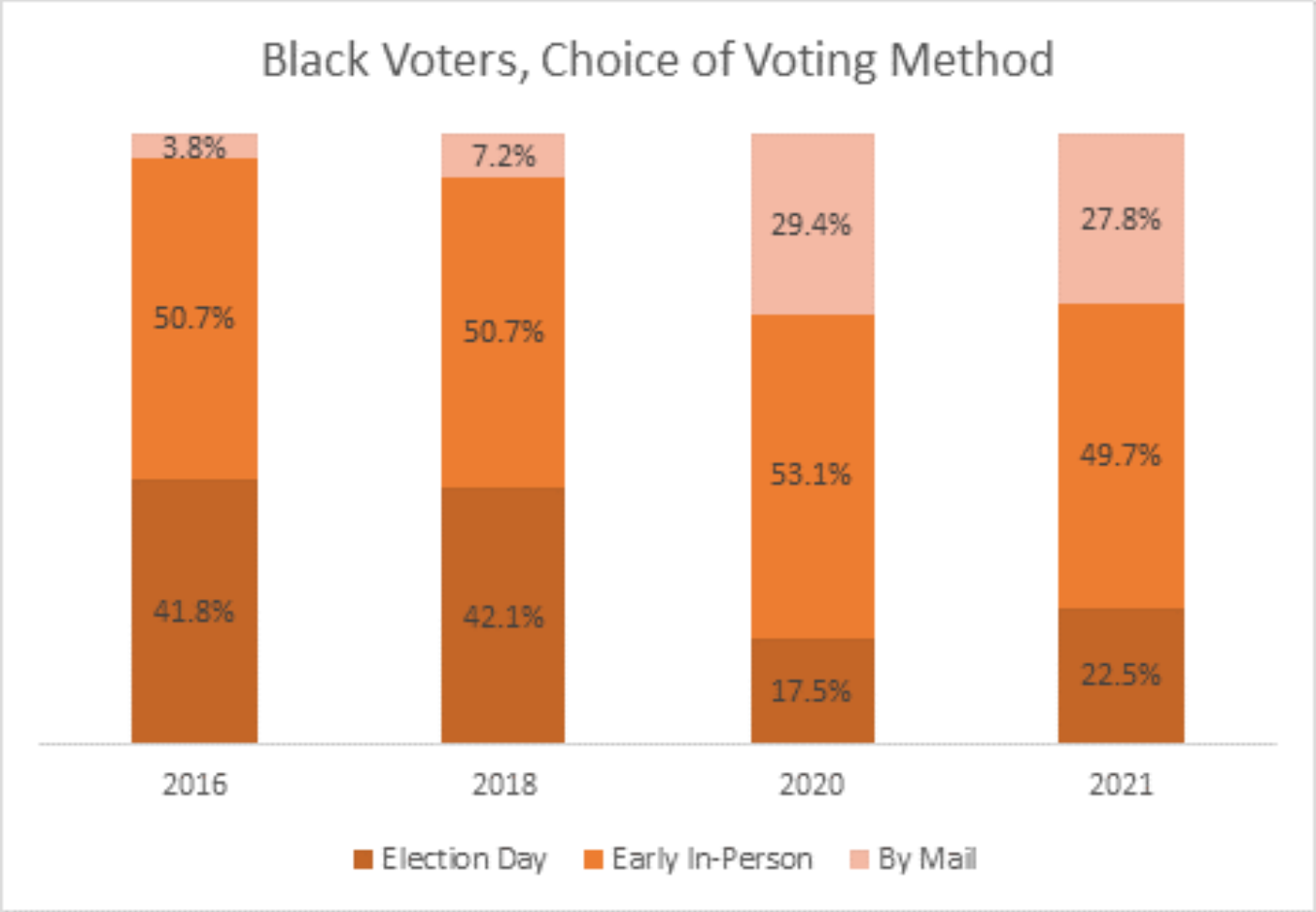
General, all of the winners received less than 52% of the vote and the Secretary of State election went to a run-off.

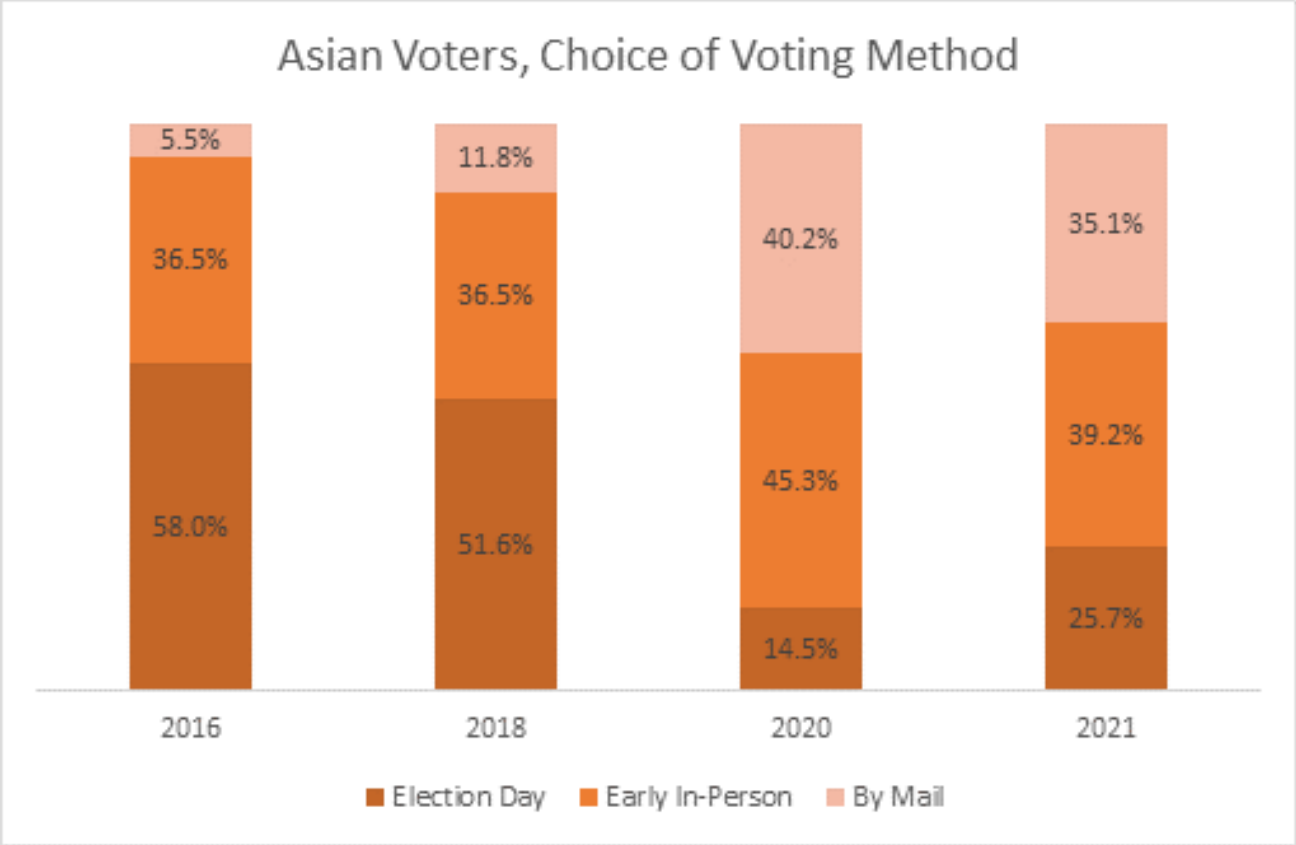
96. In 2020, a Democratic candidate won the presidential election for the first time in Georgia since 1992, and two senatorial races were sent to run-offs, with both Democratic candidates winning in January 2021. This was the first time a Democrat had won a United States Senate race in Georgia since 1996.

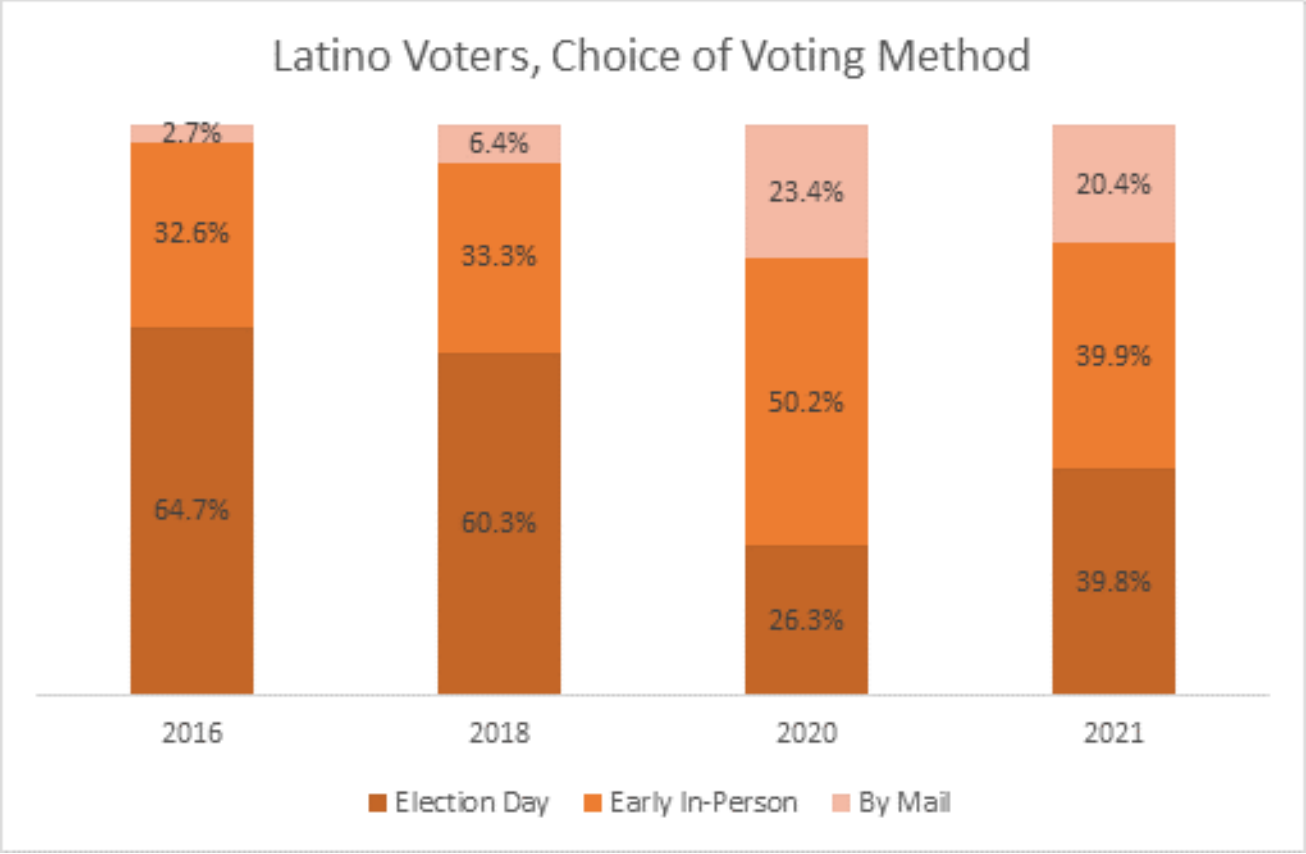
97. Between 2016 and 2020, the share of registered voters who are white decreased from 56% to 53% and the percentage of voters who turned out who were white decreased from 61% to 58%. These percentages stayed the same for the January 2021 run-off elections. These 3 percentage point drops were determinative in who won the 2020 and 2021 elections.

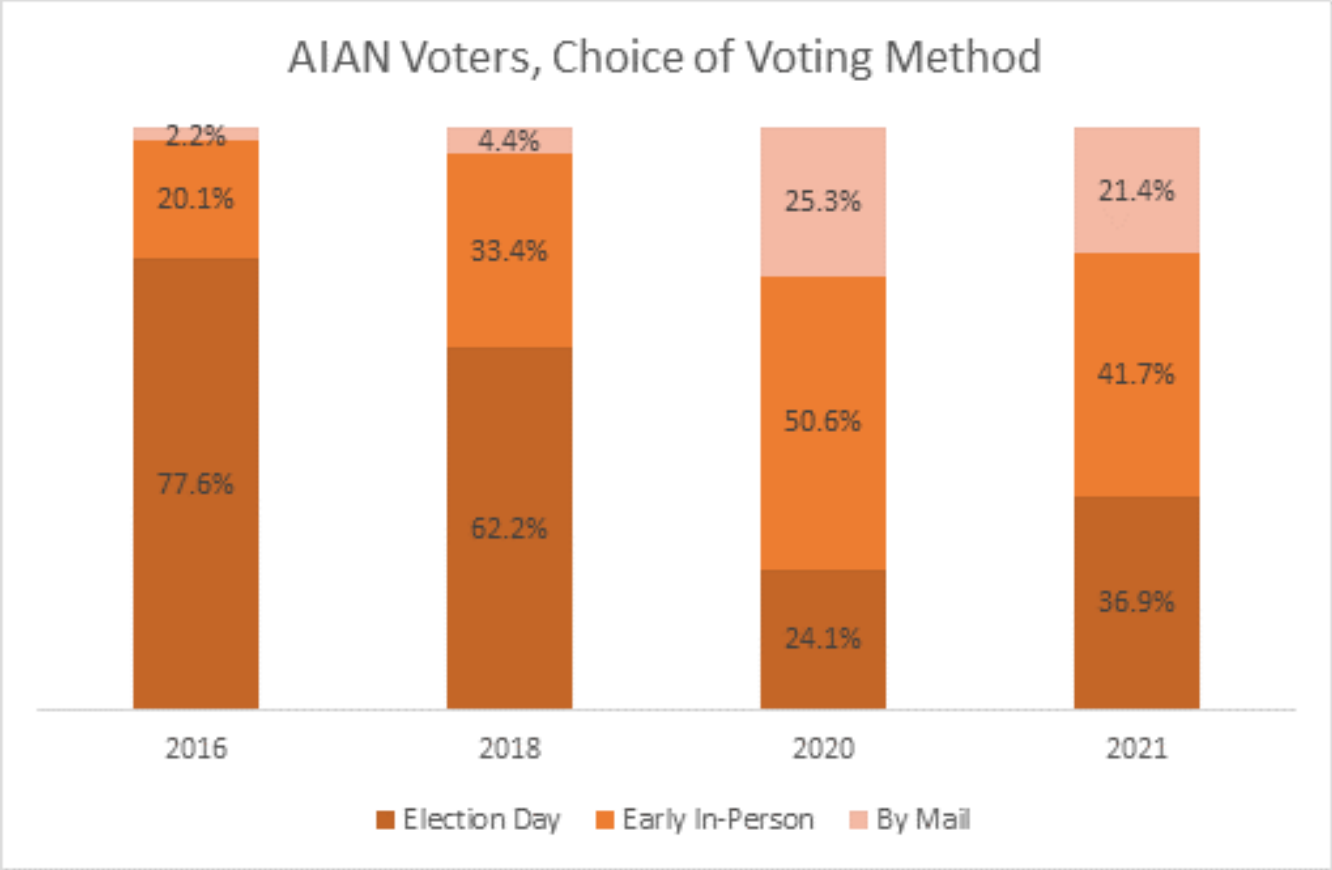
98. Election analysis demonstrates that Black voters and other voters of color usually provide strong support to Democratic candidates. Members of the Georgia General Assembly are aware of this fact.

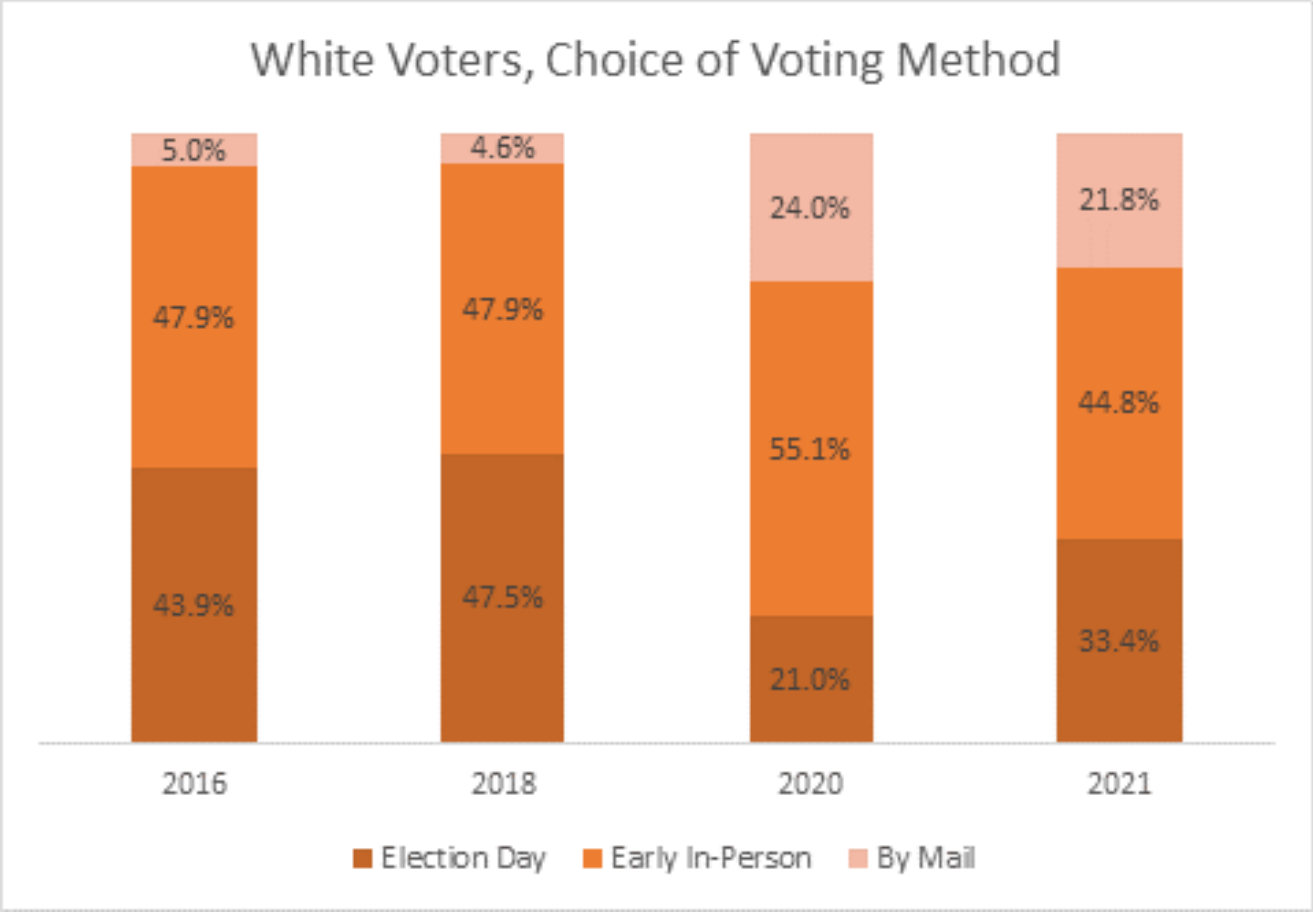
99. As seen in the following graphs, even before the pandemic, Black, Latinx, AAPI and American Indian Alaska Native voters (referred to as "AIAN") in Georgia had made increasing use of voting by mail and early voting. This trend increased significantly during the 2020 and 2021 elections because of the pandemic.


Black Voters, Choice of Voting Method
3.8%
50.7%
41.8%
7.2%
50.7%
42.1%
29.4%
53.1%
17.5%
27.8%
49.7%
22.5%
2016
2018
2020
2021
Election Day
Early In-Person
By Mail


Asian Voters, Choice of Voting Method
5.5%
36.5%
58.0%
11.8%
36.5%
51.6%
40.2%
45.3%
14.5%
35.1%
39.2%
25.7%
2016
2018
2020
2021
Election Day
Early In-Person
By Mail


Latino Voters, Choice of Voting Method
2.7%
32.6%
64.7%
6.4%
33.3%
60.3%
23.4%
50.2%
26.3%
20.4%
39.9%
39.8%
2016
2018
2020
2021
Election Day
Early In-Person
By Mail


AIAN Voters, Choice of Voting Method
2.2%
20.1%
77.6%
4.4%
33.4%
62.2%
25.3%
50.6%
24.1%
21.4%
41.7%
36.9%
2016
2018
2020
2021
Election Day
Early In-Person
By Mail



100. Between the 2016 and 2018 general elections in Georgia, the percentage of Black, Latinx, AAPI and indigenous tribe voters choosing to vote by mail increased, while the percentage of White voters choosing to vote by mail decreased somewhat. White, Black, Latinx, AAPI, and indigenous voters all chose to vote by mail at larger percentages during the 2020 and 2021 elections because of the pandemic, with a greater percentage of Black and Asian voters choosing to vote by mail than White voters.

101. Mail ballots of voters of color are substantially more likely to be rejected than mail ballots by white voters. According to one study, in Georgia's June 2020 primary, 0.9% of mail ballots cast by white voters were rejected, but mail ballots cast by Black, Latinx, and AAPI voters were rejected at a rate of 1.6%, 1.9%, and 2.4%, respectively.

102. The significant use of early voting opportunities by persons of color in Georgia, and particularly Black voters, is due in substantial part to in-person early voting on Sunday where, because of "Souls to the Polls" programs, Black voters, who in the 2020 general election comprised approximately 30% of all registered voters in Georgia, accounted for 36.5% of early in-person Sunday voters, compared to 26.8% of early in-person voters on other days. In comparison, 60% of voters who voted early on days other than Sunday were white; but whites comprised only 47% of in-person early voters on Sundays, despite comprising 53% of Georgia's registered voters.

103. Black residents of Georgia are 88% more likely than white Georgians to be below the poverty level and 58% more likely than white Georgians to lack computer access in their homes, and, upon information and belief, as a result are less likely to possess the IDs required by SB 202, and more likely to encounter

technology access issues that would render the printing and copying requirements of SB 202 more burdensome on them.

104. Latinx residents of Georgia are 91% more likely than white Georgia residents to be below the poverty level and 74% more likely than white Georgians to lack computer access in their homes, and, upon information and belief, as a result are less likely to possess the IDs required by SB 202, and more likely to encounter technology access issues that would make the printing and copying requirements of SB 202 more burdensome.

105. Native Hawaiian Pacific Islanders are 100% more likely than white Georgians to lack computer access in their homes.

106. Upon information and belief, Black and Latinx voters and other persons of color in Georgia are more likely than white voters in Georgia to hold jobs that do not give them the flexibility to take off from work during the time that early voting and drop boxes are available under the new restrictions of SB 202.

107. Black and Latinx households in Georgia are substantially less likely than white households to own a vehicle, and Black and Latinx residents are more likely to have to use public transportation than white residents. Upon information and belief, this means that Black and Latinx Georgia voters rely more heavily than white voters on easily accessible polling places.

108. Since 2013, Georgia has experienced polling place closures, consolidations, and changing of locations of polling places, often in communities of persons of color.

109. Persons of color are more likely than white voters to confront long lines to vote in Georgia when they vote in person. Long lines are well-known to depress voter turnout.

110. Voting in Georgia is highly racially polarized, with Black voters and other voters of color voting for Democratic candidates at far greater rates than white voters.

The 2020 and 2021 Elections

111. In 2020, Georgians voted for President, two U.S. Senators, and numerous other federal and state positions. After none of the U.S. Senate candidates received the more than 50% vote necessary to avoid a runoff, Senate runoff elections were held in January 2021.

112. The 2020 and 2021 elections saw record turnout among Georgia voters, as well as unprecedented enthusiasm for absentee, early, and drop box voting.

113. To the apparent horror of politicians who had long sought to suppress Black and minority voters, this surge in voting was most pronounced in these exact

communities. For example, there was a 25% increase in Black voter registration compared to 2016, and Black voters—who historically turned out for runoff elections at much lower rates than general elections—returned to vote in the runoff elections at a higher rate than white voters.

114. Many of these Black and other minority votes came in the form of absentee and early voting. In fact, nearly 30% of Black voters cast their ballot by mail, with Black voters accounting for almost 32% of absentee ballot requests. In contrast, only roughly 24% of white voters voted through the mail. Although white voters still made up a majority of mail voters in the 2020 general election, their share of the vote-by-mail electorate dropped from 67% in 2016 to 54% in 2020; the Black share, meanwhile, surged from 23% to 31%.

115. Ultimately, the 2020 and 2021 elections resulted in, among other things, the election of the President preferred by Black Georgians, as well as the election of the first Black person to represent Georgia in the United States Senate, Reverend Raphael Warnock.

116. Following these results there was a widespread effort to attack the integrity of Georgia's elections, including by repeated, baseless allegations of fraud and falsely casting doubts as to the integrity of mail-in votes and those that were received in drop boxes. Many of these groundless allegations came from

former President Trump and his supporters, in an effort to overturn the results of the election. However, while numerous plaintiffs brought litigation echoing these allegations, the results of this litigation consistently demonstrated that mail-in and drop box voting were safe and secure. In fact, Secretary Raffensperger's office conducted a thorough investigation and audit into these claims of wrongdoing, ultimately finding no evidence to support the allegations. As Secretary Raffensperger explained to the U.S. Congress, "there is nowhere close to sufficient evidence to put in doubt the result of the presidential contest in Georgia," and his office did not "see[] anything out of the ordinary scope of regular post-election issues."

The Legislative History of SB 202

117. In response to the record participation in the 2020 and 2021 elections—and, in particular, the record participation of Black voters and other voters of color—Republican legislators introduced a wave of proposed legislation in 2021, including SB 202. This proposed legislation was grounded in baseless and often racially tinged claims of voter fraud and election irregularities. Eleven such bills were proposed in Georgia itself.

118. The procedure leading up to the passage of SB 202 was rushed and irregular. Bills covering the same subjects, but with slightly conflicting provisions

were introduced in both houses of the Georgia legislature, sometimes in the same house. Committee hearings were scheduled on the bills, but without posted agendas, and without ample notice to the public or opportunity for the public to view the proceedings without attending them in person.

119. Throughout the hearings held on these bills, the legislators were repeatedly warned by community members and organizations that these bills, including SB 202 and predecessor bills with similar provisions, would adversely and disproportionately impact populations of persons of color.

120. For example, at a February 19, 2021 hearing on a related bill that contained many of the same provisions that ultimately were incorporated into SB 202, representatives of the Georgia Coalition for the People's Agenda noted that "prohibiting of early voting on Sundays, and therefore the elimination of the Souls to Polls, feels like a direct attack on certain communities."

121. At this same hearing, representatives from the Southern Poverty Law Center Action Fund warned legislators that these bills represented calculated attempts to adversely impact minority groups, and that provisions such as the photo ID requirement for absentee ballots would disproportionately impact racial minorities.

122. There was a brief hearing on SB 202 during the first week of March, 2021 before the Senate Ethics Committee. At this time, SB 202 was a scant two-pages long, and limited to the issue of distribution of absentee ballot applications. At that hearing, representatives of community groups alerted the Committee to the potential negative impact on such community groups of the civil penalties for distributing absentee ballot applications to certain voters.

123. On March 17, 2021, at a hearing of the House Special Committee on Election Integrity, SB 202 was discussed, despite no agenda for the hearing being provided to the public until two hours before the hearing.

124. At this March 17, 2021 hearing, community organizations and civil rights organizations, including from the Georgia Coalition for the People's Agenda, expressed multiple concerns to lawmakers about SB 202, including the lack of transparency and irregular process, as well as concerns about the bill taking local authority away from county election officials.

125. On March 18, 2021—the very next day—SB 202 was amended, with a new substitute replacing it. Representative Barry Fleming, Chair of the House Special Committee on Election Integrity, conducted a hearing of the House Special Committee on Election Integrity, despite not having a substitute bill ready to distribute, and instead described the changes to the bill without releasing new

language to the public. Despite the fact that there were changes from the prior day, Chairman Fleming also prohibited comment from organizations that had provided comments on March 17, 2021.

126. On March 19, 2021, two further substitutions to the bill were made and released to the public.

127. On March 22, 2021, an hour before a scheduled hearing of the House Special Committee on Election Integrity on that same day, House leadership shared the new 90-plus page version of SB 202 with Democratic members of the Committee. Chairman Fleming refused to take additional comment on the bill, despite the substantial changes and the two additional March 19 substitutions.

128. To recap the amendments: when SB 202 was first passed over from the Senate to the House on March 9, 2021, it was a 2-page bill that dealt only with restrictions concerning individuals and third-party groups sending absentee ballot applications to prospective voters. In a matter of two weeks, the bill had grown to over 90 pages covering a host of additional topics.

129. During the debates on the House and Senate floors on SB 202, Black legislators alerted their colleagues to the discriminatory impact SB 202 would have on Black voters and other voters of color.

130. The bill was put up for a full vote on March 25, 2021.

131. Despite the requirements of Georgia law that bills having either a significant impact on expenditures of a state agency or at least a $5 million cost to local agencies must have a fiscal note attached, SB 202 contains no fiscal note. The failure to attach a fiscal note to the bill was raised on the Senate floor, but was summarily rejected by the President of the Senate.

132. Throughout the debate on SB 202, its supporters used the pretextual—and self-created—disproven myth of voter fraud and non-existent election irregularities in the 2020 Georgia general election to attempt to justify their actions. For example, Chairman Fleming of the House Special Committee on Election Integrity publicly likened absentee ballots to the "shady part of town down near the docks" where the "chance of being shanghaied" is significant.

The Challenged Provisions of SB 202

133. The final version of SB 202 is a 98-page omnibus bill which constitutes a major overhaul of Georgia's Election Code and voting procedures. These changes are summarized below.

134. ***New Burdens on Requesting and Casting an Absentee Ballot (Sections 25, 27, and 28):*** Georgia voters have cast absentee ballots by mail for decades. Voting by mail provides significant benefits to voters, including those who work multiple jobs, are unable to get time off or arrange child care to vote, or

have difficulties arranging transit to polling places. It also can alleviate some of the barriers to voting such as those caused by long lines at the polls and confusing changes to voting locations. SB 202 adds a new and complicated absentee ballot application process, as well as burdensome new mandatory ID requirements when requesting and casting an absentee ballot.

135. Under these new requirements, voters must include a Georgia driver's license number or Georgia State ID number on their absentee ballot application. If they have neither, voters are required to provide a copy of a current utility bill, bank statement, government check, paycheck or other government document that shows the name and address of the voter. These documents, along with other required identifying information, must be attached to their absentee ballot applications.

136. Likewise, in order to actually cast an absentee ballot, a voter must now provide additional personal ID information on the absentee ballot mailing envelope. This information includes their Georgia driver's license number or Georgia State ID number. If the voter does not have a Georgia driver's license or Georgia State ID, they must provide the last four digits of their social security number or a copy of a current utility bill, bank statement, government check,

paycheck or other government document that shows the name and address of the voter.

137. SB 202 also mandates voters provide their date of birth on absentee ballot applications and absentee ballot return envelopes, even though the date of birth of a voter is not "material to determining the eligibility of an absentee voter." *Martin v. Crittenden*, 347 F. Supp. 3d 1302, 1308 (N.D. Ga. 2018).

138. Nevertheless, SB 202 mandates penalizing voters who fail to include this immaterial information on their absentee ballot applications or when returning their voted ballot to the county registrars, leading to the disenfranchisement of voters who fail to cure this omission. This disenfranchisement violates 52 U.S.C. § 10101(a)(2)(B), which prohibits the practice of disqualifying voters "because of an error or omission on any record or paper relating to any application, registration, or other act requisite to voting, if such error or omission is not material in determining whether such individual is qualified under State law to vote in such election."

139. Because voters, except those over the age of 65 or disabled, must make a new application for an absentee ballot for each election in an election cycle, voters are now required to provide this ID and date of birth information multiple times each and every election cycle.

140. These provisions will disproportionately affect voters from minority communities, who are less likely to possess a current and valid form of government issued photo ID and who have less access to state offices that issue such IDs. Compounding these issues, voters from minority communities are also less likely to have access to computers and internet in order to print out proof of identification. These increased burdens will lead to a further increase in the rate at which the ballots of Black and other voters of color are rejected. Moreover, these requirements expose absentee ballot applicants to potential fraud or identity theft.

141. ***Prohibitions on the Proactive Mailing of Ballot Applications (Section 25):*** As discussed above, voters must file complicated and burdensome applications for every single election in order to receive an absentee ballot. During the 2020 and 2021 elections, election officials in Fulton and DeKalb Counties sought to lessen some of these burdens by mailing absentee ballot applications to all eligible voters within county lines. This proactive mailing of absentee ballot applications allowed voters, and particularly Black voters and other voters of color, better access to the voting process. Likewise, private individuals and groups, such as the Plaintiffs, also assisted voters in obtaining absentee ballot applications.

142. Now, SB 202 further compounds the burden on voting by prohibiting public employees and agencies from sending unsolicited absentee ballot

applications to voters. Instead, voters must now specifically request an absentee ballot application through the website of the Secretary of State, election superintendent, or registrar.

143. To further compound the issue, SB 202 also threatens private individuals and non-public entities, such as the Plaintiffs, with a substantial risk of incurring hefty criminal sanctions if they attempt to help voters request absentee ballots. If a person or entity sends an absentee ballot application to someone who has already requested an absentee ballot or voted absentee, they can be fined—despite the fact that many voters reported not receiving their absentee ballots after making an initial request for one in the 2020 election cycle.

144. SB 202 also creates additional, unreasonable burdens on organizations and individuals who provide assistance to voters who wish to vote by absentee ballots, including by: (1) prohibiting them from pre-filling the voter's information on an absentee ballot application, even if the voter provides that information to the person or organization sending the application; (2) prohibiting them from viewing or handling completed absentee ballot applications, including by assisting a voter to print, copy or fax a completed application in order to send the completed application form to election officials; and (3) requiring individuals or organizations to use the official absentee ballot application produced by the Secretary of State's

office when sending the application to voters, but compelling them to include a confusing disclosure on the form stating that the form was not sent by a government entity.

145. These burdensome and baseless restrictions will disproportionately impact Black voters and other voters of color. These voters are more likely to seek to vote by mail—and are more likely to face disparate burdens if they are forced to vote in person—but face heightened challenges accessing computers, the internet, and other resources that will now be necessary to successfully request, complete, and return absentee ballot applications.

146. ***Delaying and Compressing Time Periods (Sections 27 and 28):*** SB 202 also delays and compresses multiple time periods related to voting that will disproportionately impact Black voters and other voters of color.

147. *First*, while a voter could previously request an absentee ballot 180 days prior to the election in question, SB 202 limits the earliest that a voter can now request an absentee ballot to 79 days prior to the election. Likewise, while the board of registrars was previously required to mail absentee ballots to eligible applicants between 45 to 49 days prior to many elections, SB 202 delays the issuance of absentee ballots to 25 to 29 days prior to a qualifying election. And voters now must submit this absentee ballot request no later than 11 days prior to

the date of the election (instead of the previous deadline of the Friday immediately prior to an election).

148. *Second*, SB 202 shortens the runoff period to four weeks following the election that led to the runoff for stateside voters. This change significantly limits the ability of Georgians to register to vote or update their voter registration information before a runoff election and also significantly limits access to in-person early voting for runoff elections. For example, voters may only have a three-day early voting period if a runoff occurs during Thanksgiving week following a November general election. The ability to apply for and cast an absentee mail-in ballot during this reduced time period will also be challenging, if not impossible, for some voters—particularly lower income or hourly wage Black voters and other voters of color who are less able to take time off during their workday.

149. *Third*, SB 202 gives unlimited discretion to election boards to limit early voting hours to 9 a.m. to 5 p.m., and to two Saturdays before the election. And even if election boards want to expand those hours, they are prohibited from opening early voting before 7 a.m. or after 7 p.m., or for more than two Sundays. County boards of election are given unfettered discretion with no guidelines in determining whether to eliminate all Sunday early voting days.

150. The compressed periods for requesting and submitting an absentee ballot will leave voters who become ill or have to travel out of the area in the lurch if they cannot vote during early voting and are unable to meet the earlier deadline to apply for a ballot. It will disproportionately affect Georgian Black voters, who vote absentee at a higher rate than white voters, face longer lines and higher burdens if they are forced to vote in person, and have increased difficulty obtaining the necessary documentation and overcoming the other barriers to apply for an absentee ballot. And, as Black and other minority voters' mail-in ballots are rejected at significantly higher rates than those of white voters, this shortened period to cure ballot issues will likewise disproportionately impact Black and other minority voters.

151. The limitations on early voting hours similarly disproportionately affect Black and other minority voters. These voters are more likely to have inflexible work, school, child care, or similar obligations that prevent them from voting between 9 a.m. and 5 p.m. Likewise, Georgia Secretary of State statistics demonstrate that Black voters and other voters of color utilize Sunday early voting hours significantly more than white voters. Black voters and other voters of color take part in GOTV efforts focused on Sunday early voting, including "Souls to the Polls" events hosted by Black churches and other faith-based organizations that

provide rides to the polls following church services or as part of their church fellowship activities. As a result, the elimination or reduction of Sunday early voting under SB 202 discriminates against Black voters and other voters of color who utilize Sunday early voting hours at higher rates than white voters. In contrast, while SB 202 adds a second required Saturday of early voting, most of the large, metropolitan counties that contain significant Black and other minority voters already offered multiple weekend days of early voting. The counties that did not, and that therefore will increase voting access, are largely rural, predominately white counties.

152. The provisions of SB 202 imposing new burdens on voting by absentee ballots and limiting access to early voting also will result in longer lines and delays at the polls on election day, particularly for Black voters and voters of color in Georgia who are more often than white voters impacted by lines and delays when voting on election day.

153. ***Drop Box Limitations (Section 26):*** During the 2020 election, there were 330 drop boxes in Georgia—including 94 across the core Atlanta counties of Fulton, Cobb, DeKalb, and Gwinnett—where voters could securely vote. These drop boxes were heavily used by Black and other minority voters; for example,

counties containing large Black populations averaged significantly more drop boxes than those with majority-white populations.

154. Many of these drop boxes were outside of buildings, and county election administrators had discretion to keep drop boxes open after business hours and up until the polls closed. These drop boxes were monitored via video surveillance to ensure that they were secure and safe. The accessibility of these drop boxes provided meaningful voting access to voters who otherwise would have been deterred by long lines (which are particularly prevalent in majority Black and Brown precincts), prevented from accessing polling places while open due to work or other restrictions, or subject to other impediments. As a result, in part, of the availability of these drop boxes, the rate of absentee ballots rejected for lateness decreased significantly. The drop boxes were safe and effective, and there is no evidence that they were susceptible to voter fraud.

155. SB 202 significantly limits the availability and accessibility of absentee ballot drop boxes in several ways. Each of these new restrictions on the availability of drop boxes will disproportionately impact Black voters and other voters of color, as well as senior and physically disabled voters, who used absentee ballot drop boxes in large numbers to avoid having to wait in long lines and face unreasonable delays during in-person early voting and election day voting.

156. *First*, while all counties would be required to have at least one drop box, the number of drop boxes per county would be limited to the lesser of one per every 100,000 "active registered voters" or one per advance voting location in the county. This restriction will disproportionately and discriminatorily impact Black voters and other voters of color. For example, the four core Atlanta counties, which contain a large percentage of the total Black population in Georgia, will go from 94 drop boxes in 2020 to no more than roughly 23 drop boxes in future elections.

157. *Second*, SB 202 limits the placement of drop boxes to the interior of early voting locations and prohibits access to drop boxes outside of the hours that early voting is taking place. SB 202 likewise limits the hours during which early voting can take place (and thus drop boxes can be open). These limitations effectively render drop boxes useless to anyone other than voters who could already participate in early voting and eliminate virtually all benefits of drop boxes *vis a vis* normal early voting. As Black voters are more likely to work multiple jobs or jobs with inflexible hours, they gained the most benefit from the previous flexibility of drop box hours and locations, and therefore will be disproportionately burdened by these restrictions.

158. *Third*, SB 202 requires that drop boxes be under constant surveillance by an election official, licensed security guard, or law enforcement official. This requirement presents serious concerns regarding voter intimidation for voters of color, who are frequently and unfairly the targets of law enforcement.

159. ***Disenfranchisement of Out-of-Precinct Voters (Sections 34 & 35):*** Over the last decade, Georgia shuttered hundreds of voting precincts, many in predominantly Black or other minority neighborhoods. These closures, as well as numerous other changes to voting locales, have confused voters and caused many to attempt to vote at the wrong precinct. Prior to the enactment of SB 202, a voter who attempted to vote at the incorrect precinct within the same county where they were registered to vote could cast a provisional ballot, which would be counted for every race on that ballot in which the voter was qualified to vote. SB 202 essentially disenfranchises these voters.

160. Under SB 202, only voters who arrive to vote after 5 p.m. and sign an affidavit under penalty of perjury that they cannot get to their home precinct before the close of the polls will be able to cast a provisional ballot which will count with respect to the same contests on the voter's home precinct ballot. All other voters who arrive at the incorrect precinct before 5 p.m. can cast a provisional ballot at the incorrect precinct, but none of their votes will count. In order for their votes to

count, they will be required to vote at their home precinct, even if they cannot get to their home precinct by the time polls close. The Board of Elections is tasked with reviewing the sworn statements submitted by the voters who cast provisional out-of-precinct ballots after 5 p.m., but it is unclear what the purpose of that review would be.

161. Upon information and belief, the out-of-precinct voting prohibitions of SB 202 are more likely to disproportionately and negatively impact Black voters and other voters of color who are more frequently impacted by polling place closures and consolidations in majority-minority precincts than white voters in majority-white precincts, which often leads to voters being confused about the location of their correct precinct on election day.

162. ***Punishments for Officials Who Defend Voters' Rights (Sections 5, 6, and 7):*** Apparently in retaliation for Secretary Raffensperger's defense of the integrity of the Georgia election system, SB 202 removes election-related powers from the Secretary of State. The Secretary of State will no longer serve as the Chair or have a vote as a member of the State Election Board.

163. Another provision of SB 202 allows the State Election Board and members of the General Assembly to take over county election offices. Similarly, the county commissioner or members of the General Assembly could take action to

commence a performance review of election supervisors that could lead to their suspension. Up to four election supervisors could be suspended at one time. It is foreseeable that the takeover provision of SB 202 will disproportionately and negatively impact Black voters and other voters of color residing in counties with large percentages of minority voters, such as Fulton, DeKalb, Gwinnett, Clayton, Chatham, and others where the Republican members of the legislature fear the erosion of the tenuous hold on their majority party status and may use this procedure to challenge and reject legitimate ballots and disqualify eligible voters.

164. ***Unlimited Challenges to Voters (Sections 15 and 16):*** SB 202 also encourages large-scale voter challenges and purges—including on the eve of elections when county registrars are otherwise focused on administering early voting and preparing for election day—by allowing for unlimited numbers of challenges to be made to the eligibility of voters by other registered electors in a county and mandating that county registrars conduct hearings on such challenges within ten days of receipt and allowing for the immediate removal of voters from the statewide voter registration list.

165. SB 202 also provides that challenged voters be given only three days' written notice by mail of the hearings on the challenges, thereby making it difficult, if not impossible, for lower income and hourly wage Black voters, other

voters of color, senior voters, physically disabled voters and other voters who have other obligations during the hearing days and times to attend these hastily arranged hearings. The minimal notice provisions authorized by SB 202, combined with the burden presented of unlimited challenges, also makes it unlikely that voters will actually receive the written notice prior to the hearing or be able to prepare adequately to rebut unfounded challenges and increases the likelihood that eligible voters will be disenfranchised on the eve of elections.

166. ***Criminalization of Line Warming (Section 33):*** SB 202 also criminalizes "line warming," the expression of well-meaning individuals and organizations to support and encourage the act of voting in a non-partisan way by handing out water or snacks to ease the burden on voters standing in line for protracted periods to vote. SB 202 bars such assistance within 25 feet of any voter standing in line to vote at any polling place, thereby restricting line warming expression for hundreds of feet outside of the entrances to polling places.

167. These line warming restrictions will disproportionately affect Black and Brown voters, who are more likely to experience long lines and delays at the polls. These provisions also subject individuals and organizations to criminal sanctions for engaging in the Constitutionally protected expressive conduct of distributing food and beverages to voters in line.

168. ***Ban on Mobile Voting Facilities (Sections 20 & 26):*** Prior to SB 202, Georgia county election administrators were permitted to provide "mobile voting units," or movable or portable polling facilities used as supplemental polling locations both during early voting and on election day. In 2020, two such mobile voting units were used in Fulton County, which is more than 44% Black and which has a history of long lines to vote and difficulties in obtaining an absentee ballot. These two mobile voting units allowed more than 11,200 people to vote. There is no evidence that the mobile voting units used in the 2020 election posed election security risks or created any additional administrative issues.

169. SB 202 effectively bars such mobile voting units. This prohibition was unmistakably intended to target the large Black population of Fulton County, and its enforcement will disproportionately harm Black and Brown voters.

CLAIMS FOR RELIEF

COUNT I

42 U.S.C. § 1983 and 52 U.S.C. § 10301 (Discriminatory Purpose in Violation of the Fourteenth and Fifteenth Amendments to the United States Constitution and Section 2 of the Voting Rights Act, Against all Defendants)

170. Plaintiffs repeat and re-allege each and every allegation contained in all prior paragraphs, as if fully set forth herein.

171. 42 U.S.C. § 1983 authorizes suits for the deprivation of a right secured by the Constitution or the laws of the United States caused by a person acting under the color of state law.

172. Both the Fourteenth and Fifteenth Amendments to the United States Constitution prohibit intentional racial discrimination by state actors.

173. Specifically, Section 1 of the Fourteenth Amendment provides that:

> No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

174. Section 1 of the Fifteenth Amendment provides that:

> The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

175. Section 2 of the Voting Rights Act of 1965, 52 U.S.C. § 10301, in relevant part, provides:

> (a) No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgment of the right of any citizen of the United State to vote on account of race or color, or [membership in a language minority group].

> (b) A violation of subsection (a) of this section is established if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) of this section in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice.

176. A violation of Section 2 of the Voting Rights Act may be based either on a finding of a discriminatory purpose behind the challenged governmental action or a finding of a discriminatory result from the challenged governmental action.

177. SB 202 was enacted with a racially discriminatory purpose in violation of Section 2 of the Voting Rights Act, and the Fourteenth and Fifteenth Amendments.

178. Discriminatory intent may be established by proof that the defendants used race as a motivating factor in their decisions. *Village of Arlington Heights v. Metropolitan Hous. Dev. Corp.*, 429 U.S. 252, 265 (1977).

179. The burdens of SB 202 are intended to, and will have, the effect of disproportionately and adversely affecting the right to vote of Black voters and other voters of color, including, but not limited to:

1) Imposing onerous and unnecessary ID requirements on voters who submit applications for absentee ballots and when they return voted absentee ballots;

2) Prohibiting public employees and public entities from sending out unsolicited absentee ballot applications to voters;

3) Threatening private individuals and non-public entities with potentially large fines for sending absentee ballot applications with voter information filled in, without confusing and misleading statements, or to voters who are not currently registered to vote or who have already requested a ballot, received a ballot or voted a ballot;

4) Delaying and compressing the time during which a voter can request or submit an absentee ballot;

5) Giving county registrars unfettered discretion to limit early voting hours to 9 a.m. to 5 p.m. and to entirely eliminate Sunday early voting;

6) Limiting the number of absentee ballot drop boxes and limiting access to absentee ballot drop boxes to locations inside early voting sites when advance in-person voting is taking place, rendering the drop

boxes virtually useless since voters can vote early in person at these locations;

7) Prohibiting out of precinct voting before 5 p.m. without recognizing the confusion and negative impact experienced by Black voters and other voters of color from hundreds of polling place changes in Georgia since the Supreme Court's decision in *Shelby County v. Holder*;

8) Removing the voting power of the Secretary of State on the State Elections Board, coupled with granting power to the State Election Board to take over county election boards and targeting jurisdictions with large populations of Black voters and other voters of color;

9) Encouraging the submission of large numbers of voter challenges by using the term, "unlimited," in referring to elector challenges in SB 202, and requiring the setting of hearings on the challenges within ten days of their submission, with only three days mandatory written notice of the challenge hearings to voters—making it difficult, if not impossible, for voters to adequately prepare for the challenge hearings—assuming voters even receive the written notice within three days of the mailing of the hearing notices;

10) Criminalizing "line warming," which provides relief for voters forced to wait in long lines because of the other discriminatory voting changes imposed by SB 202; and

11) Prohibiting the use of mobile voting units.

180. Race was a motivating factor behind the enactment of SB 202.

181. SB 202 was enacted at a time when Black voters and other voters of color were making increasing use of means of voting that are being limited and restricted in SB 2020.

182. SB 202 was enacted immediately following elections in which the size of the population of Black voters and other voters of color, particularly when compared to the diminishing share of the white vote, had become larger in statewide elections.

183. In passing SB 202, the Georgia legislature deviated from procedural norms in its rushing the bill to passage, in its failure to provide adequate notice and opportunity to be heard and to view committee proceedings; in its speedy replacement of a 2-page bill with a 95-page bill without sufficient notice; and in its failure to include the required fiscal statement.

184. The purported justification for SB 202 was pretextual.

185. The Chair of the House Committee on Public Integrity made culturally insensitive statements in connection with the passage of SB 202.

186. The supporters of SB 202 were on notice of the foreseeability of the disparate impact of SB 202.

187. There are less discriminatory alternatives to every aspect of SB 202, including simply maintaining the status quo, particularly given the complete lack of evidence of significant voter fraud.

188. Defendants will be unable to prove that, SB 202 would have been enacted without race as a motivating factor.

189. Implementation of SB 202 will irreparably harm Plaintiffs as well as Black voters and other voters of color by denying or abridging their right to vote.

190. WHEREFORE, Plaintiffs pray for relief as set forth hereafter.

COUNT II

(Violation of Section 2 of the Voting Rights Act of 1965 52 U.S.C. § 10301, *et seq*.)

191. Plaintiffs repeat and re-allege and incorporate by reference all prior paragraphs as if fully set forth herein.

192. Section 2 of the Voting Rights Act of 1965, 52 U.S.C. § 10301(a), prohibits voting laws, policies, or practices that "result[] in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color."

193. In determining whether a challenged voting practice violates the results prong of Section 2 of the Voting Rights Act, courts examine the "totality of the circumstances" and determine whether "the political processes … are [] equally open to participation by [members of a protected class] … in that its members have less opportunity than other members of the electorate to participate in the political process." *See e.g.*, *Johnson v. Governor of Fla.*, 405 F.3d 1214, 1228 n.26 (11th Cir. 2005); *Burton v. City of Belle Glade*, 178 F.3d 1175, 1197-98 (11th Cir. 1999).

194. The challenged provisions of SB 202 violate the rights of Plaintiffs because they were adopted for the purpose of denying voters of color full and equal access to the political process.

195. The disproportionate impact of these provisions, individually and collectively, is caused by present and past discrimination on account of race and ethnicity by the state of Georgia, as shown by the totality of the circumstances, including factors deemed relevant by the Supreme Court in *Thornburg v. Gingles*, 478 U.S. 30, 36 (1986).

196. Georgia has a long history of official discrimination in the jurisdiction that touched the right of minorities to register, vote, or otherwise participate in the electoral process, and the history of voting discrimination against Black residents in Georgia is well documented. Georgia's history of racial discrimination in voting

is so long and deep that courts have taken judicial notice of it. *Johnson v. Miller*, 864 F. Supp. 1354, 1379-80 (S.D. Ga. 1994), *aff'd and remanded*, 515 U.S. 900 (1995); *Wright v. Sumter Cty. Bd. of Elections & Registration*, 301 F.Supp. 3d 1297, 1310 (M.D. Ga. 2018), *aff'd,* 979 F.3d 1282 (11th Cir. 2020).

197. Voters of color in Georgia bear the effects of discrimination in education, employment, and health that hinder their ability to participate effectively in the political process.

198. The policy behind the use of the voting practices in question is tenuous and pretextual.

199. As a result of SB 202's requirements and prohibitions described above, individually and collectively, under the totality of the circumstances, the political process in Georgia is not equally open to participation to Black voters and other voters of color in that such citizens have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice.

200. The requirements and prohibitions of SB 202 described above constitute qualifications or prerequisites to voting within the meaning of Section 2 of the Voting Rights Act, and result in the denial or abridgement of the right to vote of U.S. citizens who are residents of Georgia on account of their race or color,

or membership in a language minority group, in violation of Section 2 of the Voting Rights Act.

201. Implementation of SB 202 will irreparably harm Black voters and other voters of color.

WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.

COUNT III

42 U.S.C. § 1983
(Burden On The Fundamental Right To Vote
First And Fourteenth Amendments)

202. Plaintiffs repeat and re-allege each and every allegation contained in all prior paragraphs, as if fully set forth herein.

203. 42 U.S.C. § 1983 authorizes suits for the deprivation of a right secured by the Constitution or the laws of the United States caused by a person acting under the color of state law.

204. The First and Fourteenth Amendments of the United States Constitution protect the right to vote as a fundamental right. The First Amendment's guarantees of freedom of speech and association protect the right to vote and to participate in the political process.

205. SB 202 violates the First and Fourteenth Amendments' protection of rights to vote, thus giving Plaintiffs an actionable claim for the deprivation of those rights under 42 U.S.C. § 1983.

206. The right to vote is a fundamental constitutional right also protected by both the due process and equal protection clauses of the Fourteenth Amendment. *See*, *e.g.*, *Bush v. Gore*, 531 U.S. 98, 104-05 (2000); *Harper v. Va. State Bd. of Elections*, 383 U.S. 663, 670 (1966); *Anderson v. Celebrezze*, 460 U.S. 780, 786-87 (1983).

207. "A court considering a challenge to a state election law must weigh 'the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate' against 'the precise interests put forward by the State as justifications for the burden imposed by its rule,' taking into consideration 'the extent to which those interests make it necessary to burden the plaintiffs' rights.'" *See Burdick v. Takushi*, 504 U.S. 428, 434 (1992) (citing *Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983)).

208. Even when a law imposes only a slight burden on the right to vote, relevant and legitimate interests of sufficient weight still must justify that burden. *Common Cause/Ga. v. Billups*, 554 F.3d 1340, 1352 (11th Cir. 2009). The more a challenged law burdens the right to vote, the closer the scrutiny courts will apply

when examining that law. *Stein v. Ala. Sec. of State*, 774 F.3d 689, 694 (11th Cir. 2014).

209. The challenged provisions of SB 202 inflict substantial burdens on Georgia's voters, both through the individual restrictions and provisions and collectively through the combined effect of all of the restrictions and barriers.

210. The burdens caused by these provisions, individually and collectively, are serious and substantial, and in some cases cause voters to risk being completely disenfranchised.

211. No legitimate state interest justifies these significant restrictions and burdens.

212. The purported goals of increasing confidence in elections or encouraging uniformity are pretextual at best, and in fact would be harmed by imposing the restrictions and requirements of SB 202.

213. These restrictions could undermine, not restore, confidence in Georgia's elections, and would do so at the expense of imposing undue burdens on voters.

214. The requirements and prohibitions in SB 202, individually and collectively, impose a substantial burden on the fundamental right to vote of Georgia citizens, and are neither justified by, nor necessary to promote, interests

put forward by the State that were not already being adequately protected by pre-existing criminal laws and election procedures.

215. These provisions will irreparably harm Black voters and other voters of color.

WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.

COUNT IV

42 U.S.C. § 1983
(Freedom of Speech and Association
First And Fourteenth Amendments)

216. Plaintiffs repeat and re-allege each and every allegation contained in all prior paragraphs, as if fully set forth herein.

217. 42 U.S.C. § 1983 authorizes suits for the deprivation of a right secured by the Constitution or the laws of the United States caused by a person acting under the color of state law.

218. The First Amendment to the United States Constitution, as applied by the Fourteenth Amendment, prohibits abridgement of freedom of speech.

219. SB 202 violates Plaintiffs' First and Fourteenth Amendment rights by restricting Plaintiffs' and their members' core political speech and expressive conduct—namely, encouraging voting through the distribution of absentee ballot applications in an effort to engage the public and voters and encourage them to

vote. Plaintiffs therefore have an actionable claim under 42 U.S.C. § 1983 for the deprivation of those rights.

220. By penalizing innocent errors in the distribution of absentee ballot applications, SB 202 will have a chilling effect on Plaintiffs' and their members' core political speech, without being narrowly tailored to meet a compelling state interest.

221. As a result of SB 202, Plaintiff organizations will not be able to carry out a key aspect of their organizational mission.

222. Because the restrictions in SB 202 and the potential penalties extend to Plaintiff organizations' members, their members' right of association is also jeopardized.

WHEREFORE, Plaintiffs pray for relief as set forth herein.

COUNT V

42 U.S.C. § 1983
(Freedom of Expressive Conduct and Speech in Providing Food and Drink First And Fourteenth Amendments)

223. Plaintiffs repeat and re-allege each and every allegation contained in all prior paragraphs, as if fully set forth herein.

224. The First Amendment to the Constitution, as applied by the Fourteenth Amendment, prohibits abridgement of freedom of speech and expression.

225. The provision of SB 202 that criminalizes "line warming activities" will chill protected expressive conduct and speech that supports of the act of voting by exposing to criminal prosecution those who provide sustenance to voters waiting in long lines.

226. The Plaintiffs who have supported in-person voting in past elections by providing food and/or drinks to voters who request such while waiting in long lines to vote have done so without complaint or incident. This sustenance is provided without regard to political affiliation and without engaging in any speech or conduct that supports a particular candidate or political party while providing such food and/or drinks.

227. The Plaintiffs who provide this sustenance have done so as an expression of their appreciation for voter participation and often accompany their non-verbal acts with a verbal appreciation for voting generally.

228. SB 202 restricts Plaintiffs' and their members' core political speech and expressive conduct in "line warming activities" and the restrictions on these acts of kindness are content based restrictions on speech and expression about a

particular subject matter (expressive support for voting) in a public forum. It is also not supported by either a compelling (or even reasonable) governmental interest and is not narrowly tailored to any legitimate or compelling governmental interests.

229. The kindness of providing food and drink in a non-partisan way to anyone who requests sustenance while waiting in a long line to vote does not exact political pressure or intimidation on voters. Moreover, existing state and federal laws already prohibit improper interference, political pressure or intimidation of voters engaged in in-person voting.

230. As a result of SB 202, the Plaintiff organizations who have engaged in "line warming" activities will not be able to carry out a key aspect of their organizational mission in supporting voters who wait in long lines to vote.

231. Plaintiffs who seek to continue "line warming" in future elections cycles are chilled by the specter of criminal prosecution under the provisions of SB 202.

232. Because the restrictions in SB 202 and the potential penalties extend to Plaintiff organizations' members, their members' right of association is also jeopardized.

WHEREFORE, Plaintiffs pray for relief as set forth herein.

COUNT VI

52 U.S.C. § 10101, 42 U.S.C. § 1983
(Immaterial Voting Requirement)

233. Plaintiffs repeat and re-allege each and every allegation contained in all prior paragraphs, as if fully set forth herein.

234. 52 U.S.C. § 10101(a)(2)(B) prohibits the practice of disqualifying voters "because of an error or omission on any record or paper relating to any application, registration, or other act requisite to voting, if such error or omission is not material in determining whether such individual is qualified under State law to vote in such election."

235. Section 25 of SB 202 provides that "[i]n order to confirm the identity of the voter, such [absentee ballot application] shall require the elector to provide his or her . . . date of birth," among other information, and that registrars or absentee ballot clerks "shall compare the applicant's . . . date of birth . . . with the information on file in the registrar's office."

236. Section 27 of SB 202 mandates that absentee ballot envelopes require absentee voters to provide their date of birth, and Section 29 of SB 202 provides that the registrar or clerk "shall then compare the . . . date of birth entered on the absentee ballot envelope with the same information contained in the elector's voter registration records." Section 29 of SB 202 also provides that the registrar or clerk

must reject the absentee ballot envelope "if the identifying information entered on the absentee ballot envelope does not match the same information appearing in the elector's information appearing in the elector's voter registration record, or if the elector has failed to furnish required information."

237. SB 202 violates Plaintiffs' rights under 52 U.S.C. § 10101(a)(2)(B). It mandates that Georgians provide information—and requires county election officials to reject absentee ballot applications and absentee ballots based on a failure to provide exactly matching information—that is not material to determining whether individuals are qualified to vote and not a unique voter identifier in order to successfully apply for and cast an absentee ballot.

238. **WHEREFORE**, Plaintiffs pray for relief as set forth herein.

PRAYER FOR RELIEF

Plaintiffs respectfully request that this Court:

1. Declare that the challenged provisions in SB 202 violate the Fourteenth and Fifteenth Amendments to the United States Constitution and Section 2 of the Voting Rights Act's prohibitions on discriminatory purpose;

2. Declare that the challenged provisions in SB 202 violate the results prong of Section 2 of the Voting Rights Act;

3. Declare that the challenged provisions of SB 202 violate the First and Fourteenth Amendments to the United States Constitution as undue burdens on the right to vote;

4. Declare that the challenged provisions of SB 202 violate the First and Fourteenth Amendments to the United States Constitution as undue burdens on the right to free speech and freedom of association;

5. Declare that the challenged provisions of SB 202 violate the Civil Rights Act;

6. Enjoin Defendants, their agents, officers, employees, successors, and all persons acting in concert with them from enforcing any of the challenged provisions of SB 202;

7. Award Plaintiffs their costs, expenses, and reasonable attorneys' fees, pursuant to 42 U.S.C. § 1988, 52 U.S.C. § 10301 and other applicable laws; and

8. Order any other relief that this Court deems just and proper.

Dated: May 28, 2021

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**Admitted pro hac vice*

Counsel for Plaintiffs

CERTIFICATE OF COMPLIANCE AND OF SERVICE

Pursuant to L.R. 7.1(D), the undersigned hereby certifies that the foregoing FIRST AMENDED COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF has been prepared in Times New Roman 14, a font and type selection approved by the Court in L.R. 5.1(C), and that I provided notice and a copy of the foregoing using the CM/ECF system which will automatically send e-mail notification of such filing to all attorneys of record.

Respectfully submitted this 28th day of May, 2021.

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