Department of Justice

STATEMENT OF
KRISTEN CLARKE
ASSISTANT ATTORNEY GENERAL
CIVIL RIGHTS DIVISION
U.S. DEPARTMENT OF JUSTICE

BEFORE THE

HOUSE JUDICIARY COMMITTEE
SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS, AND CIVIL LIBERTIES
U.S. HOUSE OF REPRESENTATIVES

FOR A HEARING ENTITLED

OVERSIGHT OF THE VOTING RIGHTS ACT:
POTENTIAL LEGISLATIVE REFORMS

PRESENTED

AUGUST 16, 2021

Statement of
Kristen Clarke
Assistant Attorney General
Civil Rights Division
U.S. Department of Justice

Before the Committee on the Judiciary
Subcommittee on the Constitution, Civil Rights, and Civil Liberties
For a Hearing Entitled
"Oversight of the Voting Rights Act: Potential Legislative Reforms"

August 16, 2021

Introduction

Chairman Cohen, Ranking Member Johnson, and Members of the Subcommittee on the Constitution, Civil Rights, and Civil Liberties of the U.S House of Representatives Committee on the Judiciary. My name is Kristen Clarke, and I serve as the Assistant Attorney General for the Civil Rights Division of the United States Department of Justice ("Department"). Thank you for the opportunity to testify today on the Department's work to implement and enforce the Voting Rights Act of 1965 and the need for legislation to revitalize and restore the Act.

The Voting Rights Act truly is, as President Johnson said when he signed it into law, "one of the most monumental laws in the entire history of American freedom."[i] It reflected bold action by Congress when bold action was needed to confront the fact that nearly a century after the Reconstruction Amendments, millions of citizens were still denied the ability to register, to vote, and to participate fully in American democracy because of their race. The Act's most innovative provisions—for example, the appointment of federal examiners to put people on the rolls in recalcitrant jurisdictions and the preclearance provision that prevented jurisdictions from adopting new provisions to roll back hard-won gains—transformed American democracy.

In the South, more Black voters were added to the rolls in the two years following passage of the Act than in the previous century. And in places from South Carolina to South Dakota, from Alabama to Alaska, minority voters—Black, Hispanic, Asian, Native American, and Alaska Native—elected officials who used government as a mechanism to make all our lives better. When recalcitrant jurisdictions tried to get around these gains with new tactics, preclearance blocked them from doing so.

The issues of fairness and democracy we face today are different, but equally pressing. If the end of the twentieth century was a period of dramatic expansion in voting rights, the twenty-first century has, so far, been a period of rising attacks on voting rights. We have seen cutbacks to early voting periods; imposition of additional requirements to cast ballots, either at polling places or with respect to absentee ballots; and new restrictions on the right of civic groups to assist citizens in participating fully in the electoral process. Congressional action is necessary to prevent us from backsliding into a nation where millions of citizens, particularly citizens of

color, find it difficult to register, to cast their ballot, and to elect candidates of their choice to offices from the Presidency to members of their local school board

The 2020 Census numbers show that the United States is an increasingly diverse nation. This raises profound questions about how the next redistricting will be conducted, including whether the officials who draw congressional and legislative maps and decide districts for city councils and county commissions draw districts that are fair to *all* voters.

This round of redistricting is the first since the Supreme Court's 2013 decision in *Shelby County v. Holder*, 570 U.S. 529 (2013), severely cut back on the protections the Voting Rights Act provides. It is now time for Congress to respond, by developing legislation that responds to our current situation, with respect to redistricting and otherwise—a situation in which voting rights are under pressure to an extent that has not been seen since the Civil Rights era. The Department looks forward to working with Congress to craft new voting rights legislation that addresses the problems we face today.

In thinking about what new legislation should do, it is important to understand how we got to this point. So in my testimony today, I want to explain the special role the Department has played in protecting the right to vote—particularly in the modern era that began with creation of the Civil Rights Division in 1957.

That story provides several important lessons. First, case-by-case challenges to restrictive voting practices are not enough. That sort of litigation is complex and resource intensive and gives what the Supreme Court memorably called the "advantage of time and inertia" to jurisdictions that are using practices that deny citizens an equal opportunity to participate in the political process and elect representatives of their choice.

That is why Congress adopted the preclearance requirement of Section 5 of the Voting Rights Act in 1965, and amended and extended that requirement, each time with overwhelming bipartisan support in 1970, 1975, 1982, and 2006.

Second, preclearance worked well. Covered jurisdictions knew that if they could not show that a proposed voting change—from moving a polling place, to requiring voters to reregister, to deannexing minority neighborhoods, to diluting minority voting strength—had neither a discriminatory purpose nor a discriminatory effect, the Department would block that change. So most jurisdictions decided not to propose such changes in the first place. But when jurisdictions *did* try those sorts of discriminatory changes, over the half century preclearance was in effect, the Department's 3,000+ objections protected the rights of millions of citizens.

At the same time, preclearance was fair to covered jurisdictions. Changes that improved the electoral process were swiftly approved. And the Department worked cooperatively with jurisdictions to ensure they were able to implement lawful changes without undue delay.

Third, the costs of losing preclearance have been profound. The *Shelby County* decision gave jurisdictions a green light to adopt new restrictive practices and then sit back until costly litigation proves that the new laws have a discriminatory purpose or effect. I will describe for

you how the Department's enforcement efforts over the past eight years have been negatively affected by the current legal landscape—one in which we have lost a key tool at the very time that the United States has experienced a renaissance of restrictive voting laws.

In 1965, Congress enacted a statute that provided creative and effective mechanisms for enforcing our Constitution's commitment to ensuring that no citizen's right to vote would be abridged on account of race or color. We look forward to working with this Congress to complete the task that Congress began.

I. The Department of Justice's Early Role in Enforcing Federal Voting Rights Statutes and the Enactment of the Voting Rights Act of 1965

Many reasons propelled Congress to enact the Voting Rights Act of 1965—in particular the activism of people of color, historically disenfranchised communities, and civil rights heroes such as John Lewis, in Selma, Alabama and elsewhere. Another critical factor was the experience of Department attorneys who had been working since the creation of the Civil Rights Division in 1957 to protect voting rights using the then-existing protections.

A. The Department of Justice's Efforts to Enforce Pre-Voting Rights Act Legislation Were Hampered By Having to Bring Case By Case Litigation

Eight years before the Voting Rights Act was passed, Congress enacted its first major civil rights statute since reconstruction, the Civil Rights Act of 1957, based on a legislative proposal first drafted by the Department. The Civil Rights Act enabled the creation of DOJ's Civil Rights Division and authorized the Attorney General to bring suit to enjoin voter intimidation and racially discriminatory denials of the right to vote.

The first case against a county registrar for violating the act, *United States v. Lynd*, was brought by John Doar, an attorney who began serving in the Civil Rights Division during the Eisenhower administration.[ii] By 1963, the Department had filed 35 suits challenging discrimination or threats against Black registration applicants in individual counties. But as then-Attorney General Robert Kennedy said, that was a "painfully slow way of providing what is after all a fundamental right of citizenship." As the Supreme Court later acknowledged in *South Carolina v. Katzenbach*, the Department's efforts to protect the right to vote were seriously hindered by the burdens inherent in bringing case by case challenges:

> Voting suits are unusually onerous to prepare, sometimes requiring as many as 6,000 man-hours spent combing through registration records in preparation for trial. Litigation has been exceedingly slow, in part because of the ample opportunities for delay afforded voting officials and others involved in the proceedings. Even when favorable decisions have finally been obtained, some of the States affected have merely switched to discriminatory devices not covered by the federal decrees or have enacted difficult new tests designed to prolong the existing disparity between white and [Black] registration.

South Carolina v. Katzenbach, 383 U.S. 301, 314 (1966).

When considering the legislation that would ultimately become the Voting Rights Act, Congress determined that the existing federal anti-discrimination laws were insufficient to overcome the resistance by some state and local officials to enforcement of the guarantees of the Fifteenth Amendment. Congressional hearings– including by the House Judiciary Committee – showed that the Department of Justice's efforts to eliminate discriminatory election practices by case-by-case litigation had been unsuccessful in opening up the registration process; as soon as one discriminatory practice or procedure was proven to be illegal and enjoined, a new one would be substituted in its place and litigation would have to commence anew.

B. The Voting Rights Act of 1965 Conferred Particular and Unique Authority On the Department of Justice

In the wake of Bloody Sunday and based on a record developed in large part by the Civil Rights Division's litigation, Congress met the moment and, in bipartisan fashion, passed the Voting Rights Act, which President Johnson called "one of the most monumental laws in the entire history of American freedom." The Act was reauthorized and signed by President Nixon in 1970, by President Ford in 1975, by President Reagan in 1982, and by President George W. Bush in 2006.

To address longstanding, rampant discrimination, the Act abolished literacy tests, so-called "good character" tests, and other barriers to voting. It also enacted Section 2, an important and powerful nationwide prohibition against any voting practice or procedure that discriminates on the basis of race or color.

One of the Act's most powerful innovations involved a preclearance requirement, administered by the Department and targeted at those areas of the country where Congress believed the potential for discrimination to be the greatest. Under Section 5, jurisdictions covered by these special provisions could not implement any change affecting voting until the Attorney General or the United States District Court for the District of Columbia determined that the change did not have a discriminatory purpose and would not have a discriminatory effect. The Act authorized the Attorney General to bring civil actions in response to violations of the Act's provisions, including Section 5. The Act also permitted the Attorney General to designate jurisdictions subject to Section 5 preclearance for the deployment of trained federal examiners, who could require qualified persons be added to voter registration lists. Further, in those counties where a federal examiner was serving, the Attorney General could request that trained federal observers monitor activities within polling places. Finally, the Act directed the Attorney General to challenge the use of poll taxes; Virginia's poll tax was struck down by the Supreme Court on constitutional grounds shortly thereafter.[iii]

Of all the tools available to the Department to protect the right to vote and prevent racial discrimination, Section 5 proved to be the most effective. And in the nearly fifty years of implementing Section 5, the Department showed itself to be up to the task of enforcing the statute in a manner that f respected the effective administration of elections by state and local jurisdictions.

C. The Department of Justice's Historical Role in Administering Section 5 of the Voting Rights Act

The Attorney General has historically delegated responsibility for preclearance decisions to the Assistant Attorney General ("AAG") who heads the Civil Rights Division.[iv] Administrative reorganization in 1969 produced a separate section within the Civil Rights Division specializing in voting rights, called the "Voting Section," which conducted the factual review for preclearance submissions and made detailed recommendations to the Assistant Attorney General.[v]

Section 5 mandates that all covered jurisdictions seek "preclearance" of any new "voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting."

Under Section 5, covered jurisdictions could not implement their proposed voting changes until they had received preclearance. The two methods for a covered jurisdiction to comply with the preclearance requirement were (1) administrative review requiring the Attorney General to determine within 60 days of submission whether to object to, and thereby block, a voting change because the submitting jurisdiction failed to show the change was nondiscriminatory, or (2) judicial review, by way of a declaratory judgment action filed by the covered jurisdiction in the United States District Court for the District of Columbia.

The administrative route provided a swift, non-costly path to a preclearance determination. By contrast, the declaratory judgment route enabled a jurisdiction that was unsatisfied with the administrative route to obtain a de novo determination, by filing a declaratory judgment action against the United States to be heard by a three-judge district court. Unsurprisingly, and showing covered jurisdictions' confidence in the fairness and efficiency of the Department's process, covered jurisdictions chose the administrative route for over 99 percent of covered changes.

The Attorney General based his or her Section 5 determination on a review of material presented by the submitting authority, relevant information provided by individuals or groups, and the results of any additional investigation conducted by the Department. The submitting jurisdiction had the burden of demonstrating that the proposed change "neither has the purpose nor will have the effect" of denying or abridging the right to vote on account of race, color or membership in a language minority group.[vi] The effects of proposed voting changes were measured against the previous, or "benchmark," practice to determine whether they would "lead to a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise."[vii] The discriminatory purpose analysis was based on a number of factors established by the Supreme Court, including the sequence of events leading up to the adoption of the change, the historical background of the action, the impact of the change, and any deviations from normal procedure.[viii]

The Attorney General would then respond to the submitting jurisdictions in writing to (1) "preclear" the proposed change, allowing the change to be implemented; (2) request more information from the jurisdiction; or (3) object to the proposed change, providing the reasons supporting that decision.[ix] In those instances where the Attorney General interposed an

objection, the submitting jurisdiction had various options, including asking the Attorney General to reconsider its decision, seeking judicial preclearance in the United States District Court for the District of Columbia, abandoning the proposed change and adhering to the benchmark practice, or submitting a new change for review.

The list of impacted jurisdictions was not static, as previously covered jurisdictions could be "bailed out" from the special provisions such as the preclearance requirement if they wished to do so and met certain requirements, such as complying with Section 5 for the previous ten years, laid out in the statute. Dozens of jurisdictions did so successfully while Section 5 remained in effect.[x] Section 4(a) of the Act sets out the requirements for the termination of coverage (bailout) under Section 5.

II. The Attorney General's Section 5 Review Process Had Benefits For Voters and For Covered Jurisdictions

History proved that Section 5 was an effective tool that blocked the implementation of voting changes that had a discriminatory effect or were adopted with a discriminatory purpose. A few of the benefits of the Section 5 preclearance process are discussed below.

A. The Department of Justice Blocked Voting Changes That Were Enacted with A Racially Discriminatory Purpose or Would Have Had A Racially Discriminatory Impact

Through the Section 5 review process, the Attorney General and the United States District Court for the District of Columbia blocked numerous racially discriminatory voting changes before jurisdictions ever implemented them in an election.

The statistical evidence speaks for itself. Although the Attorney General objected to only about one percent of voting changes submitted under Section 5, this meant that more than 3,000 discriminatory voting changes were blocked between 1965 and June 25, 2013, the date of the *Shelby County* decision.[xi] The post-2000 Section 5 objection letters, along with an accompanying chart, are attached as an exhibit to my testimony.

A majority of the Department's objections included findings of discriminatory intent.[xii] Congress found that many of the changes blocked by preclearance were "calculated decisions to keep minority voters from fully participating in the political process."[xiii]

That said, the vast majority of submitted voting changes were precleared, allowing jurisdictions to institute new voting changes or rules without interference. The Department exercised its authority to object to voting changes (or to ask for additional information) judiciously under Democratic and Republican administrations alike, reserving the use of those tools for instances when the purpose or effect of the voting change was truly problematic or truly in doubt. But when jurisdictions failed to submit changes, the Department and affected voters prevailed in more than 100 "coverage" actions that temporarily enjoined voting changes that jurisdictions had been implementing without obtaining preclearance.[xiv]

By freezing voting procedures in place until the submitting jurisdiction successfully obtained preclearance, Section 5 often saved voters from having to bear the brunt of racially discriminatory voting changes while litigation was pending or while the impact of a jurisdiction's minor changes was being sorted out. Because litigation brought under Section 2 or other federal statutes occurs only after a (potentially illegal) voting scheme has already been put in place, voters have already been burdened or disenfranchised and candidates have already been elected, thereby gaining the advantages of incumbency.[xv] An illegal voting restriction or redistricting plan might be in place for several election cycles before a plaintiff can gather the evidence necessary to challenge it and succeed in litigation.[xvi]

B. A Review of Specific Section 5 Objections Demonstrates the Efficacy of the Section 5 Review Process in Identifying and Blocking Racially Discriminatory Voting Changes

Aggregate nationwide statistics alone do not do justice to the powerful impact that the Department was able to have by protecting the right to vote in localities around the country while the Section 5 preclearance process was in place. I would like to provide a few specific examples in which Department blocked racially discriminatory voting changes by interposing an objection to a Section 5 submission.

One change that preclearance prevented involved McComb, Mississippi.[xvii] A large group of Black residents in the city had long voted at the Martin Luther King Jr. Community Center, which was close to their homes on the east side of railroad tracks that run through the city. In 1997, the city tried to move that group's assigned polling place to the American Legion Hut on the west side of the tracks. To cross those tracks, Black voters on the east side—many of whom lacked transportation—would have had to travel substantial distances to find a safe crossing. Recognizing that increased difficulty that Black voters would encounter in exercising their right to vote, the Department blocked the change.

A similar Section 5 objection prevented the proposed 2007 closure of a voter registration office in Buena Vista Township, Michigan that was used heavily by minority voters; the next closest office was an 18-mile round trip away, which, using public transportation, would take at least one hour and 40 minutes to traverse.[xviii]

Another objection restored a municipal election that had been cancelled in Kilmichael, Mississippi.[xix] After several decades in which no Black candidate had been elected to municipal office due to racially polarized voting, Kilmichael's 2001 general election stood to be a potential watershed moment. Black residents had recently emerged as a majority of the town's registered voters and a number of Black candidates qualified to run for both the mayoral and board positions. White town officials responded by cancelling the election with no notice to the community. The Department denied the city's preclearance request, concluding that the cancellation was motivated by an intent to diminish minority voting strength. The election ultimately went forward and, in a historic moment, the town elected its first Black mayor as well as three Black aldermen.

Other Department objections halted statewide changes. One such objection stopped a 2007 Texas statute, which would have imposed a landownership requirement to be able to run for some elected offices.[xx] The evidence showed that there were Hispanic supervisors who were non-landowning residents of their district who would have been barred from running for reelection if the proposed candidate qualifications were implemented. Moreover, the significant disparity in home and agricultural land ownership rates between white residents and residents of color in Texas meant that a disproportionate number of racial and language minority Texans, many of whom could have been the candidates of choice of racial and language minority voters, would have been barred from running for office in these districts.

Another objection prevented the implementation of a 2009 Mississippi statute that would have imposed a majority-vote requirement for the election of school board candidates in certain school districts, a change that raised substantial concerns regarding a retrogressive effect on racial and language minority voters given the prevalence of racially polarized voting in Mississippi elections.[xxi]

The Department objected to multiple proposed redistricting plans that improperly reduced minority strength before and during the post-2010 redistricting cycle. In 2007, an objection prevented the imposition of discriminatory changes to the method of electing county commissioners sought by Charles Mix County, South Dakota, shortly after successful Section 2 litigation resulted in the election of the first Native American commissioner in county history.[xxii] After that commissioner was elected, the county pursued a referendum measure expanding the size of the board of commissioners and a redistricting plan that, in tandem, would dilute the voting strength of the county's Native American voters. The Charles Mix County sheriff had actively circulated the referendum petition, collecting signatures while in uniform.

In 2011, the Department interposed an objection to a proposed redistricting plan for East Feliciana Parish, Louisiana's police jury—the legislative and executive governing body of the parish.[xxiii] That plan would have cut the Black voting age population in District 5, thereby eliminating minority voters' opportunity to elect a candidate of choice. The cut came after the parish's demographer met separately with a group of four white "police jurors" at the beginning of the redistricting process but failed to invite the Black police jurors. At that closed-door meeting, the demographer and the white police jurors agreed to move overwhelmingly white population from the "Lakeshore" neighborhood into District 5, while excluding nearby Black population from the district. After the Department interposed an objection, the parish adopted a different plan, which increased the Black voting age population in District 5. Today, District 5 is represented by an African-American police juror today.

The Department also blocked a redistricting plan proposed by Nueces County, Texas. That plan would have moved Latino population out of, and Anglo population into, a County Commissioner District, apparently to protect an Anglo incumbent who was not the candidate of choice of the Latino community but had unseated a Latino candidate in the previous election by a very small margin.[xxiv] Similarly, a proposed redistricting plan from Long County, Georgia, sought to dilute the Black population percentage in District 3 by nearly seven percentage points by adding majority-white voting precincts to the district– even though the county could have chosen to maintain the existing percentages by adding different precincts instead.[xxv] Following

the Department's objection, Long County officials adopted a plan that remedied the problem and, today, District 3 is represented by an African-American commissioner.

C. Section 5 Review Deterred Jurisdictions From Even Trying To Adopt Voting Changes That Might Have Had A Racially Discriminatory Purpose Or Effect

Beyond the direct impact resulting from administrative or judicial refusals to preclear certain proposed changes in voting practices or procedures, Section 5 also had prevented some changes that would be certain to raise objections. Out of necessity, the preclearance requirement caused covered jurisdictions to be more prudent in their approach to voting changes or procedures than they otherwise would have been.

Moreover, covered jurisdictions frequently modified or withdrew proposed voting changes after receiving a formal letter from the Department requesting additional information in support of the preclearance submission. If the information subsequently provided by the submitting jurisdiction was insufficient to establish that the voting change was not discriminatory, the Attorney General would often object to the change.

More than 800 proposed changes were altered or withdrawn in the period after 1982.[xxvi] Empirical studies demonstrate that the Department's requests for more information had a significant effect on the degree to which covered jurisdictions complied with their obligation to protect minority voting rights.[xxvii] For example, a study conducted by Luis Ricardo Fraga and Maria Lizet Ocampo of Stanford University found that between 1999 and 2005, more information requests stopped more than six times as many changes as formal objection letters did.[xxviii]

The preclearance process often resulted in jurisdictions deciding to voluntarily mitigate the impact of potentially discriminatory changes even when the Department did not issue a written request for additional information. One example involves a judicial preclearance case filed in the United States District Court for the District of Columbia in which South Carolina officials sought approval for a 2011 voter-identification law. During the trial, South Carolina officials made a major change. They decided to interpret the photo identification requirement in a way that effectively inserted a "reasonable impediment" exception for certain voters who had difficulties obtaining identification, thereby making it "far easier than some might have expected or feared" for South Carolina citizens to cast a ballot.[xxix] A three-judge panel precleared the law after adopting that interpretation as an express "condition of preclearance."[xxx] Two of the judges commented that the case demonstrated "the continuing utility of Section 5 of the Voting Rights Act in deterring problematic, and hence encouraging non-discriminatory, changes in state and local voting laws."[xxxi]

D. The Department of Justice Worked Cooperatively With Local Officials To Make the Preclearance Process Speedy and Efficient For Changes That Were Fair To All Voters

To facilitate and expedite the review process, the Attorney General endeavored to make the preclearance process as user-friendly as possible. The "Procedures for the Administration of

Section 5 of the Voting Rights Act of 1965" the Attorney General issued were designed to do this, and informed both submitting authorities and other interested parties of the standards by which the Department would be guided in evaluating proposed changes under Section 5.[xxxii]

Jurisdictions could submit their Section 5 submissions by mail, fax, or, in the internet age, an online portal. Department staff worked cooperatively with local officials to make sure preclearance submissions that had neither a discriminatory purpose nor a discriminatory effect would be approved quickly and efficiently. In fact, attorneys general for various states, including Mississippi and North Carolina, that were covered (at least in part) under Section 5 filed an *amicus* brief filed in the *Shelby* case acknowledging that "DOJ has administered the Section 5 review process with a significant degree of flexibility and latitude, taking into account the unique circumstances and crises that sometimes emerge within the covered jurisdictions."[xxxiii]

The Department's administrative preclearance process did not require covered jurisdictions to have legal expertise or retain a lawyer. Over the course of decades, Department staff established positive relationships with local officials such as city secretaries, town clerks, and county officials who often submitted changes for review. These officials' Section 5 submissions were often brief; simple voting changes that were clearly beneficial in nature could be precleared based on a page or two of documentation. Department staff would only ask for additional information or documentation when it was truly necessary to determine whether or not the change had a racially discriminatory purpose or effect.

The administrative preclearance process operated in a speedy and efficient manner. The Department had sixty days to respond to preclearance requests, which could be extended by an additional sixty days in certain limited circumstances. If the Attorney General failed to interpose an objection within the allotted time period, or provide another appropriate response such as an additional information request, then any pending changes were considered precleared by operation of law and jurisdictions could go forward with implementing them. However, Department staff precleared innocuous voting changes before the 60-day deadline whenever possible. If a submitting jurisdiction asked for expedited consideration – say, for an emergency polling place change that a county adopted shortly before an upcoming election, such the changes for the 2012 elections in the wake of Hurricane Sandy – Department staff would endeavor to facilitate a particularly speedy review so that non-discriminatory changes could be precleared and implemented as soon as possible.

III. The Tools Lost To The Department Of Justice As A Result Of The Supreme Court's Decision In *Shelby County v. Holder*

The Supreme Court's decision in *Shelby County v. Holder* has had a substantial effect on the ability of the Department to respond quickly and effectively to prevent the implementation of discriminatory voting changes. That decision struck down the formula provided by Section 4 of the Act for determining which jurisdictions were covered by the preclearance obligation. Without the protections of Section 5 of the Voting Rights Act, voting changes in jurisdictions with documented histories of discrimination go into effect before they can be challenged, disenfranchising many racial or language minority voters and substantially burdening their exercise of the right to vote. The Department has been forced to bring lengthy, resource-

intensive litigation under Section 2, which has proven no substitute for the critical prophylactic protection afforded by Section 5. The result is that discriminatory policies have been used in elections and remained in effect for years while legal challenges have been litigated. The loss of the right to vote in those elections, even if subsequently vindicated, can never be fully remedied – nor can the results of elections conducted under racially discriminatory redistricting plans.

A. *Shelby County* Had an Immediate Negative Impact

States wasted no time passing laws that had not or would not have survived the preclearance requirement. On June 25, 2013, the very day that the Supreme Court issued the *Shelby County* opinion, Texas officials announced that they would move forward with implementing a discriminatory and burdensome photo identification statute. That particular photo identification requirement had already been stopped twice due to concerns that it violated the Voting Rights Act: once by a Section 5 objection interposed by the Attorney General and again, when the United States District Court for the District of Columbia denied Texas's request for judicial preclearance following a full trial on the merits.[xxxiv]

The loss of preclearance forced the Department, along with private parties, to file a post-*Shelby* Section 2 suit to enjoin the statute. The lawsuit was ultimately successful but took several years to litigate and consumed substantial resources. In the meantime, untold numbers of voters were burdened or disenfranchised because the photo ID requirement remained in place while the case was pending.

The North Carolina Legislature acted with similar haste to enact an omnibus law imposing multiple voting restrictions. At the time *Shelby County* was before the Supreme Court, North Carolina had only been publicly considering a relatively narrow election bill, which included a different voter ID requirement that was much less restrictive than the one that was eventually adopted.[xxxv] However, on June 26, 2013, the day after the Supreme Court issued the *Shelby County* opinion, Senator Tom Apodaca, Chairman of the North Carolina Senate Rules Committee, publicly stated that "I think we'll have an omnibus bill coming out" and that the Senate would move forward with a "full bill."[xxxvi] The legislature then swiftly expanded its 16 page bill into 57 pages of omnibus legislation that cut early voting hours, imposed a burdensome, strict photo identification requirement, eliminated same-day registration during the early voting period, and eliminated provisional voting for out-of-precinct voters, among other restrictions.[xxxvii] The Department, along with private parties, again was forced to bring a Section 2 challenge in the absence of preclearance. During the pendency of the case, the challenged provisions were in effect for at least one major election (and some provisions were in effect for three years), limiting the rights of North Carolina's citizens to participate in the political process.

The Texas and North Carolina examples are not the only instances of troubling and unlawful post-*Shelby* voting changes that have had a discriminatory effect or were enacted with a discriminatory purpose.

B. There Is Reduced Advance Notice of– and Accountability for– Potentially Discriminatory Voting Changes

Section 5 provided indispensable advance notice of those new voting rules, which occurred as a matter of course when jurisdictions submitted proposed changes to the Department for preclearance. One of the underappreciated problems the Department has faced since *Shelby County* is a loss of notice about new voting rules.

There are tens of thousands of jurisdictions, many of them small towns, school districts, or other local jurisdictions, which conduct elections and changes practices and laws in ways that can have a retrogressive effect on minority voters. The Department does not have the resources to constantly monitor these jurisdictions to identify discriminatory or unconstitutional voting changes. Such a monitoring program would be less efficient and effective than preclearance. The Civil Rights Division's investigatory tools are simply insufficient to obtain this information on a broad scale, let alone provide adequate redress for impacted voters. The impossibility of this task means that an assortment of subtle yet critical voting changes made at the local level may be jeopardizing the right to vote of racial and language minority voters in a way that violates the Voting Rights Act. We cannot know the full extent to which local jurisdictions might be making changes that are discriminatory, for example, consolidating polling places to increase wait times and make it more difficult for minority voters to vote, annexing or deannexing territory so as to dilute minority voting strength, drawing election districts in ways that deny minority voters the ability to elect candidates of their choice, curtailing early voting hours that would have restricted access for low-income voters of color, or disproportionately purging minority voters from voting lists under the pretext of "list maintenance."

C. The Election Administration Process Is No Longer Transparent

The notice resulting from the Section 5 preclearance process provided transparency and benefits to voters, election officials, and communities in covered jurisdictions. Before the *Shelby County* decision, the Department published information regarding Section 5 submissions it received on a weekly basis, pursuant to the Attorney General's Procedures for the Administration of Section 5 of the Voting Rights Act.[xxxviii] This information was posted online and was publicly available. Interested parties could see when changes had been submitted for preclearance, request copies of submissions and provide written or telephonic comments or input to Civil Rights Division staff, and receive notice of the Attorney General's preclearance decisions.

Removing the public's visibility as to voting changes at every level of local and state government has proved to be a massive loss. For each year between 2000 and 2010, for example, the Attorney General published notice of between 4,500 and 5,500 Section 5 submissions, which contained between 14,000 and 20,000 voting changes.

D. The Public Can No Longer Participate In The Review Of Proposed Voting Changes

The Department's Section 5 preclearance process encouraged public participation, allowing voters to assess proposed voting changes before they were implemented. Over the course of conducting reviews, the Department received vital input regarding proposed voting changes and invaluable context regarding the communities in which those changes were to be implemented.

In the absence of a preclearance requirement, jurisdictions have less incentive to involve community contacts in the elections process and the process of considering and adopting voting changes. Local communities also have less insight into the electoral process and the process of making voting changes. Losing this avenue of participation is particularly harmful for minority voters and the organizations representing their interests.

This concern takes on added urgency at the present moment, as redistricting is about to commence following the decennial census. Without congressional action, the upcoming redistricting cycle will be the first without the full protections of the Voting Rights Act. Virtually every jurisdiction—from state legislatures to county commissions, school boards, and town councils—that elects its members from districts will be required to redraw district boundaries. Without preclearance, the Department will not have access to maps and other redistricting-related information from many jurisdictions where there is reason for concern, even though this kind of information is necessary to assess where voting rights are being restricted or inform how the Department directs its limited enforcement resources.

While the preclearance requirement was in place, it provided a structured process by which affected citizens and others could provide information and views on the impact of changes to voting rules before they were implemented. This valuable input from members of impacted communities is often lost without preclearance.

E. The Department Of Justice's Election Monitoring Capacity Has Been Diminished By The *Shelby County* Decision

The Department's election monitoring program has traditionally been one of the important components of its efforts to protect voting rights. The Department's experience over several decades has shown that when trained nonpartisan monitors watch the electoral process and collect evidence about how elections are being conducted, they have a unique ability to help deter wrongdoing, defuse tension, promote compliance with the law and bolster public confidence in the electoral process.[xxxix] The *Shelby County* decision, however, has significantly hampered the Department's ability to perform these critical functions in support of fair of impartial elections.

The Civil Rights Division typically conducts election monitoring for election days around the country each year. Prior to *Shelby County,* much of that monitoring activity involved sending federal election observers to jurisdictions with a need certified by the Attorney General, based in part on the Section 4(b) coverage formula.[xl] Once the Supreme Court struck down the coverage formula in *Shelby County*, the Department stopped deploying federal observers unless they were expressly authorized by a relevant court order under Section 3 of the Voting Rights Act. And there were few such orders in place. As a result, the Department has sent substantially fewer federal observers to watch the voting process in real time since the *Shelby County* decision was issued. The Department looks forward to working with Congress so that it may reinstitute the federal observer program in support of future elections, where appropriate.

IV. The Department of Justice's Experience Confirms That Bringing Affirmative Case-By-Case Litigation Under Section 2 Of The Voting Rights Act Is An Inadequate Substitute For Section 5

The Department's experience during the eight years between the Supreme Court's *Shelby County* decision and today has confirmed that case-by-case litigation is inadequate to protect voting rights. We have seen an upsurge in changes to voting laws that make it more difficult for minority citizens to vote and that is even before we confront a round of decennial redistricting where jurisdictions may draw new maps that have the purpose or effect of diluting or retrogressing minority voting strength.

A. Section 2 Litigation Is Far More Resource-Intensive Than The Administrative Section 5 Review Process

The elimination of Section 5 has increased the cost of protecting voting rights on an order of magnitude similar to the cost of a Ford Fiesta compared to a Boeing 737. Before the *Shelby* decision, the Department was able to review proposed voting changes quickly and efficiently. The vast majority of Section 5 submissions were handled by small teams consisting of a staff analyst or attorney and a reviewer and were completed within 60 days.

Since Section 5 was rendered inoperable as a result of the Supreme Court's *Shelby County* decision, the primary tool available to the Department to thwart racial discrimination in voting is costly case-by-case litigation under Section 2 of the Voting Rights Act. Whereas the Attorney General's Section 5 review process lasts, at most, a few months, Section 2 litigation often lasts years with multiple stages before multiple courts.

The greater costs of protracted litigation also accrue to governmental entities defending against discrimination claims and are ultimately paid by taxpayers, who include those voters who have been discriminated against. North Carolina lawmakers spent more than $10.5 million defending their 2013 voting bill, which the Fourth Circuit found to have been enacted with a racially discriminatory intent. Texas spent more than $3.5 million defending its burdensome photo identification law, which the full Fifth Circuit concluded had a racially discriminatory effect.[xli]

Had Section 5 been in place, Texas's strict photo identification statute likely never would have been implemented because the objections interposed by the Attorney General and the three-judge panel of the United States District Court for the District of Columbia would have remained in place. Similarly, North Carolina legislators unveiled the "full bill" imposing numerous discriminatory voting rights restrictions only after the *Shelby County* decision. A Section 5 objection would have avoided the need for the lengthy litigation that ultimately followed.

A detailed account of the pre-*Shelby* review and the lengthy, protracted post-*Shelby* litigation concerning the Texas and North Carolina statutes shows that even though Section 2 remains an important and potent tool, it is insufficient to combat racially discriminatory voting practices and is not, by itself, an adequate replacement for Section 5.

B. The Protracted, Multi-Stage Dispute Over Texas's Photo Identification Statute

In 2011, the Texas legislature passed a statute severely limiting the number of identifying documents for purposes of voting to six forms of photo identification.[xlii] As described earlier, because Section 5 was then in effect, Texas sought pre-clearance from the Department, which interposed an objection, blocking Texas from implementing the change.[xliii] Texas then sought preclearance from the United States District Court for the District of Columbia. That court also refused to preclear the change, finding that it would have a retrogressive effect on Black and Hispanic voters who would be disproportionately burdened in obtaining the required IDs compared to white voters.[xliv]

Two days after the decision in *Shelby County*, the Supreme Court vacated the district court's judgment because preclearance was no longer required.[xlv] By that time, Texas had already started moving forward with implementing the statute.[xlvi]

The Department filed a Section 2 lawsuit in federal court, which was consolidated with parallel litigation filed by private parties. The parties then embarked on months of discovery. Ultimately, a two-week trial was held in Corpus Christi in September 2014, where dozens of witnesses testified, including 16 experts– many of whom were retained by the Department.[xlvii] Months later, the district court ruled that the photo identification bill violated the "results" prong of Section 2 of the Voting Rights Act, because it had a discriminatory effect.[xlviii] The Court found that Black and Hispanic voters were two to three times less likely to possess the limited forms of identification required by the statute and that it would be two to three times more burdensome for them to get approved IDs than for white voters.[xlix]

But even so, the statute remained in effect, due to a stay of the District Court's injunction pending Texas's appeal to the Fifth Circuit.[l] Subsequently, a three-judge panel and later the *en banc* Fifth Circuit affirmed the district court's holding regarding the Section 2 results claim.[li] In the meantime, voters in all elections in Texas between June 25, 2013 and July 20, 2016 (the date of the Fifth Circuit en banc opinion) were subjected to the discriminatory voter identification statute.

Litigation continued on the merits until September 2018, when the district court entered its final judgment in the matter. Meanwhile, the private plaintiffs' fee petition is still being litigated; their fee award is currently on appeal before the Fifth Circuit.[lii]

Had Section 5 remained enforceable, voters would never have been subjected to the discriminatory ID requirement, and the Department and private litigants would not have been forced to expend tremendous resources to challenge a law that fourteen different federal judges found to be unlawful.

C. The Protracted, Multi-Stage Dispute Over North Carolina's Omnibus Voting Statute

While the *Shelby County* case was pending in front of the Supreme Court, North Carolina legislators asked state officials for racial data regarding the use of a number of voting practices.

Shielded from public view, they were quietly laying the groundwork for a major election bill.[liii] On the day after the Supreme Court effectively eliminated North Carolina's preclearance obligations, a leading state senator suddenly announced an intention to move forward with what he characterized as the "full bill."[liv] Overnight, an essentially single-issue bill was transformed into omnibus legislation that, among other things, imposed a draconian photo identification requirement, eliminated a week of early voting, ended same-day registration, and eliminated out-of-precinct provisional voting.[lv] Each of these restrictions disproportionately affected Black voters.

Shortly thereafter, in September 2013, the United States filed a Section 2 lawsuit against the State, alleging that four provisions of the new law were adopted with the purpose, and had the result, of denying or abridging the right to vote on account of race.[lvi] Prior to the 2014 midterm election, the Department and other plaintiffs moved for a preliminary injunction against several provisions.[lvii] After the district court denied the motion, the Fourth Circuit reversed in part, effectively blocking the elimination of same-day registration and out-of-precinct voting; the Supreme Court then stayed the Fourth Circuit's injunction mandate pending its decision on certiorari, over the dissent of two justices, leaving the law entirely in effect during the 2014 elections.[lviii] On April 6, 2015, the Supreme Court denied certiorari, automatically reinstituting the preliminary injunction, restoring same-day registration and out-of-precinct voting pending the outcome of trial.[lix]

A few weeks before the trial was scheduled to begin on July 13, 2015, the North Carolina Legislature enacted a new statute that changed the photo ID requirement by inserting a provision allowing voters to cast a provisional ballot that would count if they completed an affidavit affirming that they had a reasonable impediment to obtaining ID.[lx] Following the addition of this last-second "reasonable impediment" exception, the district court switched course and held two separate trials.[lxi] The first, in July 2015, dealt with all provisions except the photo ID requirement; the second, in January 2016, addressed the photo ID requirement as modified by the reasonable impediment exception.[lxii] On April 25, 2016, the district court entered judgment rejecting all claims of discrimination.

The Department and the other plaintiffs appealed that decision. On July 29, 2016, nearly three years after the Department had filed its Section 2 lawsuit, the Fourth Circuit held that the challenged provisions were enacted with racially discriminatory intent in violation of the Equal Protection Clause of the Fourteenth Amendment and Section 2 of the Voting Rights Act; the court concluded that the plaintiffs had proved that the legislation was drafted with "surgical precision" to discriminate against minority voters.[lxiii] On May 15, 2017, the Supreme Court denied North Carolina legislative leaders' petition for review.[lxiv]

Conclusion

The right to vote is sacred, particularly to people of color and historically disenfranchised communities for whom voting and participation in the democratic process is a declaration of citizenship and belonging. Their activism in Selma, Alabama and elsewhere was instrumental in animating the passage of the Voting Rights Act of 1965, which transformed American democracy. Ninety-five years after the Fifteenth Amendment's ratification, the Voting Rights

Act breathed life into the Amendment's promise that the right to vote should not be denied because of race, color or previous condition of servitude.

We know that much work remains to be done to achieve fully the goals that motivated Congress's passage of the Voting Rights Act. Unfortunately, many Americans' right to vote remains under threat notwithstanding the progress that we have made.

The Department looks forward to working with Congress to support its renewed consideration of federal legislation that meaningfully and fully protects voting rights. The Department will continue to use its existing tools to enforce the current laws. But that does not change the harsh reality that the *Shelby County* decision eliminated critical mechanisms for protecting voting rights. On behalf of the Attorney General, we ask Congress to pass appropriate legislation that will restore and improve the Voting Rights Act, enhancing the Department's ability to protect the right to vote in the twenty-first century and beyond.

---

[i] https://www.congress.gov/116/crec/2020/08/04/modified/CREC-2020-08-04-pt1-PgS4731.htm
[ii] *United States v. Lynd*, 301 F.2d 818 (5th Cir. 1962).
[iii] *Harper v. Virginia State Board of Elections*, 383 U.S. 663 (1966).
[iv] Peyton McCrary, Christopher Seaman, & Richard Valelly, *The End Of Preclearance As We Knew It: How The Supreme Court Transformed Section 5 Of The Voting Rights Act*, 11 Mich. J. of Race & Law 275, 281 (2006). For the sake of consistency and simplicity, I refer to enforcement by the "Attorney General" in my testimony today.
[v] *Id*.
[vi] *Georgia v. United States*, 411 U.S. 526 (1973); *Procedures for the Administration of Section 5 of the Voting Rights Act of 1965*, 28 C.F.R. 51.52.
[vii] *Beer v. United States*, 425 U.S. 130, 141 (1976).
[viii] *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252 (1977).
[ix] In rare instances, the Attorney General might also make no determination regarding the change (often because the submission was unnecessary or inappropriate for some reason).
[x] For a list of jurisdictions that successfully bailed out from coverage, see Section 4 of the Voting Rights Act, *available at* https://www.justice.gov/crt/section-4-voting-rights-act#bailout. The list includes jurisdictions from Alabama, California, Colorado, Connecticut, Georgia, Hawaii, Idaho, Massachusetts, Maine, North Carolina, New Hampshire, New Mexico, Oklahoma, Texas, Virginia, and Wyoming.
[xi] Section 5 Objection Letters, United States Department of Justice, *available at* https://www.justice.gov/crt/section-5-objection-letters.
[xii] *Shelby County, Ala. v. Holder*, 679 F.3d 848, 867 (D.C. Cir. 2012), *rev'd on other grounds*, 570 U.S. 529 (2013).
[xiii] H.R. Rep. 109–478, at 21 (2006), 2006 U.S.C.C.A.N. 618, 631.
[xiv] 1 Voting Rights Act: Evidence of Continued Need, Hearing before the Subcommittee on the Constitution of the House Committee on the Judiciary ("Evidence of Continued Need"), 109th Cong., 2d Sess., p. 186, 250 (2006).
[xv] 1 Evidence of Continued Need 97.

[xvi] 1 Voting Rights Act: Section 5 of the Act—History, Scope, and Purpose: Hearing before the Subcommittee on the Constitution of the House Committee on the Judiciary, 109th Cong., 1st Sess., p. 92 (2005).
[xvii] DOJ File No. 1997-3795. Ltr. From Acting Ass't Att. Gen. Bill Lann Lee to John H. White, Jr., Esq., June 28, 1999, *available at* https://www.justice.gov/sites/default/files/crt/legacy/2014/05/30/MS-2670.pdf.
[xviii] DOJ File No. 2007-3837. Ltr. From Acting Ass't Att. Gen. Grace Chung Becker to Director of Elections Christopher Thomas & Chief Operating Officer Brian DeBano, December 26, 2007, *available at* https://www.justice.gov/sites/default/files/crt/legacy/2014/05/30/l_071226.pdf.
[xix] DOJ File No. 2001-2130. Ltr. From Ass't Att. Gen. Ralph F. Boyd, Jr. to J. Lane Greenlee, Esq., Dec. 11, 2001, *available at* https://www.justice.gov/sites/default/files/crt/legacy/2014/05/30/MS-2680.pdf.
[xx] DOJ File No. 2007-5132. Ltr. From Ass't Att. Gen. Thomas E. Perez to Texas Sec'y of State Phil Wilson, Aug. 21, 2008, *available at* https://www.justice.gov/crt/voting-determination-letter-28.
[xxi] DOJ File No. 2009-2022. Ltr. From Ass't Att. Gen. Thomas E. Perez to Special Ass't Att. Gen. Margarette L. Meeks, Mar. 24, 2010, *available at* https://www.justice.gov/crt/voting-determination-letter-19.
[xxii] DOJ File No. 2007-6012. Ltr. From Acting Ass't Att. Gen. Grace Chung Becker to Sara Frankenstein, Feb. 11, 2008, *available at* https://www.justice.gov/sites/default/files/crt/legacy/2014/05/30/l_080211.pdf. Notably, Charles Mix became subject to the preclearance requirement as a result of the county's having consented to "bail in" under Section 3 as part of a settlement of a separate voting rights case. *See* Consent Decree, *Blackmoon v. Charles Mix County*, No. 05-4017 (D.S.D. Dec. 4, 2007).
[xxiii] DOJ File No. 2011-2055. Ltr. From Ass't Att. Gen. Thomas E. Perez to Nancy P. Jensen, Oct. 3, 2011, *available at* https://www.justice.gov/crt/voting-determination-letter-5.
[xxiv] DOJ File No. 2011-3992. Ltr. From Ass't Att. Gen. Thomas E. Perez to Joseph M. Nixon, Dalton L. Oldham, & James E. Trainor, Feb. 7, 2012, *available at* https://www.justice.gov/crt/voting-determination-letter-31.
[xxv] DOJ File No. 2012-2733. Ltr. From Ass't Att. Gen. Thomas E. Perez to Andrew S. Johnson & B. Jay Swindell, Aug. 27, 2012, *available at* https://www.justice.gov/crt/voting-determination-letter-51.
[xxvi] H.R. Rep. No. 109–478, at 40–41.
[xxvii] 2 Evidence of Continued Need 2555.
[xxviii] Luis Ricardo Fraga & Maria Lizet Ocampo, *More Information Requests and the Deterrent Effects of Section 5*, in Voting Rights Act Reauthorization of 2006: Perspectives on Democracy, Participation, and Power, 65 (Ana Henderson ed., 2007), *available at* http://www.law.berkeley.edu/files/ch_3_fraga_ocampo_3-9-07.pdf.
[xxix] *South Carolina v. United States*, 898 F. Supp. 2d 30, 37 (D.D.C. 2012).
[xxx] *Id*. at 37–38.
[xxxi] *Id*. at 54 (opinion of Bates, J.).
[xxxii] Procedures for the Administration of Section 5 of the Voting Rights Act of 1965, As Amended, 28 C.F.R., Part 51, https://www.ecfr.gov/cgi-bin/text-idx?SID=49999f502e2e525507274fa4e433b622&mc=true&node=pt28.2.51&rgn=div5#sp28.2.51.f.

[xxxiii] Brief for the States of New York, California, Mississippi, and North Carolina in Support of Respondents 7, Shelby County, Ala. v. Holder, 2013 WL 432966 (No. 12-96).
[xxxiv] *Texas v. Holder*, 888 F. Supp. 2d 113, 144–45 (D.D.C. 2012), *vacated and remanded*, 570 U.S. 928 (2013). The U.S. Supreme Court vacated and remanded the decision when it issued *Shelby County*.
[xxxv] *N.C. State Conf. of the NAACP v. McCrory*, 831 F.3d 204, 227 (4th Cir. 2016).
[xxxvi] *Id*.
[xxxvii] *Id*. at 216-18.
[xxxviii] Part 51 of Title 28 of the Code of Federal Regulations.
[xxxix] Fact Sheet On Justice Department's Enforcement Efforts Following *Shelby County* Decision, *available at* https://www.justice.gov/crt/file/876246/download.
[xl] *Id*.
[xli] Jim Malewitz & Lindsay Carbonell, *Texas' Voter ID Defense Has Cost $3.5 Million*, The Texas Tribune, June 17, 2016, https://www.texastribune.org/2016/06/17/texas-tab-voter-id-lawsuits-more-35-million/.
[xlii] *Veasey v. Abbott*, 830 F.3d 216, 225-26 (5th Cir. 2016) (en banc).
[xliii] *Texas v. Holder*, 888 F. Supp. 2d 113, 144-45 (D.D.C. 2012), *vacated and remanded*, 570 U.S. 928 (2013). The U.S. Supreme Court vacated and remanded the decision when it issued *Shelby County*.
[xliv] *Id*.
[xlv] *Texas v. Holder*, 570 U.S. 928 (2013).
[xlvi] *Veasey*, 830 F.3d at 227 & n. 7.
[xlvii] *See*, *e.g.*, *Veasey v. Perry*, 71 F. Supp. 3d 627, 659-67 (2014), *aff'd in part*, *Veasey*, 830 F.3d at 265.
[xlviii] *Id*. at 633.
[xlix] *Id*. at 661.
[l] See *Veasey v. Perry*, 769 F.3d 890 (5th Cir. 2014) (granting stay).
[li] *Veasey*, 830 F.3d at 265.
[lii] *See Veasey v. Abbott*, No. 2:13-cv-00193, 2020 WL 9888360 (S.D. Tex. May 27, 2020) (awarding attorneys' fees to private plaintiffs). The Fifth Circuit held oral argument on the State's appeal of this award earlier this summer.
[liii] *Id*. at 214-16.
[liv] *Id*. at 216.
[lv] *Id*.
[lvi] *Id*. at 218.
[lvii] *Id*.
[lviii] *League of Women Voters of N.C. v. North Carolina*, 997 F. Supp. 2d 322, 339 (M.D.N.C. 2014), *rev'd in part*, 769 F.3d 224, 248-49 (4th Cir. 2014), *stayed pending appeal*, *North Carolina v. League of Women Voters of N.C.*, 574 U.S. 927 (2014).
[lix] *North Carolina v. League of Women Voters of N.C.*, 575 U.S. 950 (2015).
[lx] 831 F.3d at 219.
[lxi] *Id*.
[lxii] *Id*.
[lxiii] *Id*. at 214.
[lxiv] *North Carolina v. North Carolina State Conference of NAACP*, 137 S.Ct. 1399 (2017).