

**Committee on House Administration, Subcommittee on Elections
“Voting Rights And Election Administration In America”
October 17, 2019**

**Written Testimony of
Elena Nunez
Director of State Operations and Ballot Measure Strategies
Common Cause**

Introduction

Thank you, Chairwoman Fudge, for inviting me to testify before the House Administration Elections Subcommittee. And thank you to Chairwoman Fudge, Ranking Member Davis, and all Members of the Committee for holding this critically important hearing. My name is Elena Nunez, and I am the Director of State Operations and Ballot Measure Strategies at Common Cause, a national nonpartisan watchdog organization with 1.2 million supporters and 30 state chapters. For nearly 50 years, Common Cause has been holding power accountable through lobbying, litigation, and grassroots organizing. Common Cause fights to reduce the role of big money in politics, enhance voting rights for all eligible Americans, foster an open, free, and accountable media, strengthen ethics laws to make government more responsive to the people, and stop gerrymandering.

Common Cause was founded by John Gardner, a Republican, at a time when Republicans and Democrats worked together on the most pressing issues of the day. During the 1970s, Common Cause worked with many Members of Congress -- Democrats and Republicans alike -- who put country over party, and we were able to help pass major democracy reforms that sought to correct some of the most egregious abuses of power, including the Federal Election Campaign Act, the presidential public financing system, and the Ethics in Government Act, all timeless laws that are still extremely consequential to this day.

Many Forms of Voter Suppression

The Voting Rights Act is another historic law that has always had strong bipartisan support. In fact, each of the five times it's been reauthorized, it was signed into law by a Republican president and received strong bipartisan congressional support. However, even voting rights

have become partisan in recent years, and we've seen certain states and localities try to significantly restrict the right to vote in the last decade. Especially since the Supreme Court's devastating 5-4 *Shelby County v. Holder* decision in 2013, dozens of states and localities have tried to silence voters and make it harder for them to have their voices heard. According to a Brennan Center analysis, 25 states have put in place new voting restrictions, 15 states have passed more restrictive voter ID laws, 12 states have enacted laws making it harder for citizens to register to vote, 10 states made it more difficult to vote early or absentee, and three states made it harder to restore voting rights for people with previous convictions.¹ Many states saw the Supreme Court's decision as essentially giving a green light to voter suppression, which is done in countless ways, including poll closures, voter ID, problematic list maintenance practices including voter purges, and others. Today, though, I'm going to instead focus my testimony on several less obvious types of voter suppression tactics.

Voter Intimidation and Harassment

One voter suppression tactic that we have seen includes placing polling locations at police stations or other facilities viewed as hostile to certain voters. In 2016, Macon, Georgia, elections officials tried to move a voting precinct to a police station in a largely African American community.² Just last month in another Georgia locality, Jonesboro, which is 60% African American, the nearly all-white city council announced it would move a polling place to a police station.³ In Texas, Dallas County recently allowed polling locations to be consolidated at vote centers, which can be at police stations.⁴

A related voter suppression tactic involves having law enforcement at or near polling locations. Although "a number of states expressly prohibit the presence of law enforcement at the polls,"⁵ just the threat of having police or law enforcement at polling locations may deter certain voters who have outstanding fines, such as parking tickets or court fees, from voting. In advance of the 2016 and 2018 elections, rumors circulated online and in flyers that Immigration and Custom Enforcement (ICE) officers would be patrolling voting locations.⁶

Under the justification of safety and security, more jurisdictions seem to be placing uniformed police officers at voting booths. Springfield, Missouri, did this in 2016, and the Advancement Project noted that "[p]lacing police at poll sites can be inherently intimidating to voters, particularly in communities of color where such presence has historical ties to efforts to impede voter access to the polls."⁷ It went on to say that "police should be in poll sites only where a

¹ <https://www.brennancenter.org/our-work/research-reports/new-voting-restrictions-america>

² <https://truthout.org/articles/polling-places-in-police-stations-why-civil-rights-groups-are-still-fighting-voting-rights/>

³ https://www.huffpost.com/entry/jonesboro-georgia-polling-location_n_5d9e0979e4b06ddfc51272f0

⁴ <https://www.dallasnews.com/news/2019/10/04/elections-dallas-county-change-two-big-ways/>

⁵ https://www.brennancenter.org/sites/default/files/analysis/Briefing_Memo_Ballot_Security_Voter_Intimidation.pdf

⁶ <https://www.propublica.org/article/ice-dispelling-rumors-says-it-wont-patrol-polling-places>

⁷ <https://advancementproject.org/news/voting-rights-advocates-demand-removal-of-police-in-polling-places/>

specific and legitimate law enforcement need justifies that presence.” In the closely-contested U.S. Senate special election in Alabama in 2017, multiple voters reported that police were at or near polling locations, especially those in heavily African American precincts.⁸

President Trump himself has encouraged police to get involved at polling locations in recent elections. In 2016, then-candidate Trump stated, “We have to call up law enforcement. And we have to have the sheriffs and the police chiefs and everybody watching.”⁹ And right before the 2018 election, President Trump threatened via Twitter that he would use law enforcement to observe polling locations,¹⁰ potentially deterring eligible Americans from voting.

Misinformation Efforts

Although voter harassment and intimidation efforts can be fairly easy to document, voter misinformation efforts are often less obvious and can be difficult to immediately recognize. In the 2018 election alone, various misinformation tactics were used, and certain organizations sent wrong information to voters, many of whom lived in states or districts with competitive races that could determine control of the House and/or Senate. In late October, the Republican National Committee (RNC) sent a mailer to registered Montana voters stating that they could mail absentee ballots that are postmarked the day before the election as long as they were received by election officials by November 16th, 10 days after Election Day (state law stipulates that absentee ballots must be received by 8pm on Election Day).¹¹

Also in Montana, a group sent a mailer to 90,000 voters stating incorrectly that they were not registered to vote.¹² The state Republican Party in Missouri sent mailers to 10,000 voters with incorrect information about when their absentee ballots were due.¹³ On Election Day, voters in several states received text messages from various organizations that had incorrect information about voters’ polling locations, which resulted in voters going to the wrong polling places to vote and ultimately being turned away.¹⁴ Some precincts distributed incorrect ballots to voters.¹⁵ And in Texas, “thousands of students who live on campus at Prairie View A&M had been incorrectly told to register to vote using an address in a different precinct and would need to fill out a change-of-address form before casting a ballot.”¹⁶

And these were just some of the examples from the 2018 election. In 2016, automated social media accounts, likely connected to the Internet Research Agency, some of which targeted African American and Latinx voters, claimed (incorrectly) that voters could “vote from home” or

⁸<https://slate.com/news-and-politics/2017/12/it-looks-like-alabama-violated-federal-law-with-its-inactive-voter-scheme.html>

⁹ <https://www.npr.org/2016/08/13/489889496/trump-calls-to-stake-out-polling-places>

¹⁰ <https://twitter.com/realDonaldTrump/status/1059470847751131138>

¹¹https://billingsgazette.com/news/local/mailer-promoting-absentee-voting-in-montana-has-wrong-information-elections/article_5485a8b4-2500-52f6-bd11-6688cc818008.html

¹²<https://www.ktvq.com/news/local-news/2018/10/10/election-mailer-causing-confusion-headache-in-montana/>

¹³ <https://www.kansascity.com/news/politics-government/election/article220334185.html>

¹⁴ <https://qz.com/1453215/midterms-voters-are-getting-texts-with-false-information-about-voting/>

¹⁵ <https://www.kansascity.com/news/politics-government/election/article221167130.html>

¹⁶ <https://www.texastribune.org/2018/10/16/Prairie-View-voter-registration/>

“vota desde casa” for Hillary Clinton.¹⁷ In 2011 in a Wisconsin recall election, the conservative group Americans for Prosperity sent Democratic voters incorrect information about when absentee ballots were due.¹⁸ In 2008, flyers were distributed in largely African American neighborhoods in Philadelphia warning that citizens with warrants or unpaid fines who showed up to vote could be arrested.¹⁹

There are likely significant other similar examples occurring around the country that go unreported. Although not every example is necessarily nefarious, some of them probably were intended to suppress the vote, especially because many of these instances seem to be focused in swing states or districts.

Signature Requirements and Signature Mismatches

Another increasingly used voter suppression tactic involves states that have “exact match” signature laws for ballots, both in-person and absentee. Although many states have laws requiring one’s signature on file to match the signature on one’s ballot, this practice has increasingly been used to arbitrarily disenfranchise certain voters. Signature mismatch laws can significantly affect voters with disabilities, women who get married or divorced, seniors, people for whom English is a second language, and military personnel, among other individuals.²⁰ The often arbitrary application of the law can lead to bias by election officials, nearly all of whom are not handwriting experts, because in most cases there are no uniform standards.

In Florida in 2018, most of the around 10,000 votes not counted because of “voter error” were thrown out because of signature mismatches.²¹ Florida doesn’t have “signature teams” to verify signatures, as do other states and localities that conduct all-mail voting, such as Washington and Oregon. According to a University of Florida study, mail-in ballots cast by the “youngest voters, blacks and Hispanics were much more likely to be rejected than mail ballots cast by white voters, and that those voters are less likely to cure problems with their ballots when notified by election supervisors than other voters.”²² Meanwhile, Georgia faced several lawsuits right before the 2018 election for not notifying voters whose absentee ballots were rejected for signature mismatches.²³ In Ohio in 2016, ballots with minor errors, including signature mismatches, were discarded at a significantly higher rate in Democratic communities with higher African American populations than were ballots with errors in predominantly white counties. And in New Hampshire, after a 95-year-old voter had her 2016 absentee ballot unknowingly discarded (along with the ballots of at least 700 other New Hampshire voters), a federal judge tossed out the state’s signature mismatch law because of the “lack of standards, training and

¹⁷ https://intelligence.house.gov/uploadedfiles/2018_02_27_13_40_38_twitter_suppression.pdf

¹⁸ <https://www.politico.com/blogs/david-catanese/2011/08/afp-wisconsin-ballots-have-late-return-date-037977#>

¹⁹ <https://www.npr.org/templates/story/story.php?storyId=95509946>

²⁰ <https://www.acluga.org/en/news/aclu-georgia-files-lawsuit-absentee-ballot-signature-matching-law>

²¹ <https://www.orlandosentinel.com/politics/os-ne-signature-mismatch-florida-laws-20181120-story.html>

²² <https://www.miamiherald.com/news/politics-government/state-politics/article218654810.html?fbclid=IwAR0788iqqY14RjDvR6WiOtFKAILO1-ykYTioXprPUiMLkUwhM8kwaMZiFyU>

²³ <https://psmag.com/social-justice/handwriting-disputes-are-suppressing-the-vote>

oversight offered to poll workers who are tasked with deciding whether to throw out someone's ballot."²⁴

Many jurisdictions that have strict signature mismatch laws have faced legal challenges over their subjective interpretation of the guidelines. Some states can still reject the ballots of voters without even notifying them. Although nearly all absentee ballots are counted, the top reason that certain ones are rejected was because of a "non-matching signature,"²⁵ and in a close election, rejected absentee ballots could change the result.

Cutbacks in Early Voting

A less apparently obvious form of suppressing votes is done by reducing early voting opportunities. Since 2004, the number of Americans casting a ballot before election day has doubled to about 40%.²⁶ However, often under the guise of "cost savings" or even "fairness," certain jurisdictions have attempted to eliminate or significantly reduce early voting in recent years. States and localities often claim that reducing early voting will save them money, which although true in some cases, appears not to be the primary reason for the reduction, as African American voters tend to utilize early voting significantly more than do white voters.²⁷

In North Carolina, the legislature reduced early voting from 17 days to 10 days, which was eventually overturned by a court because the change targeted African-Americans with "surgical precision."²⁸ Florida reduced early voting from 14 days to eight days.²⁹ Tennessee reduced early voting from 15 days to 13 days.³⁰ Wisconsin eliminated early voting for nights and weekends in 2014, then tried to restrict early voting to two weeks (from six weeks); it also eliminated weekend voting right before the election (a change that is pending in the 7th Circuit).³¹ Meanwhile in Ohio, the Republican legislature eliminated six days of early voting, and then the Republican Secretary of State cut early voting on nights and Sundays.³² And most recently earlier this year, Texas passed a law that significantly curtailed the number of mobile polling locations for early voting, depriving some localities of any early voting options for many miles.³³

African American voters tend to use early voting disproportionately more so than white voters do,³⁴ so these changes clearly have a disproportionately discriminatory impact. Some of these

²⁴<https://www.nhpr.org/post/federal-judge-strikes-down-nhs-signature-mismatch-absentee-voting-law#stream/0>

²⁵ https://www.eac.gov/assets/1/6/2016_EAVS_Comprehensive_Report.pdf

²⁶<https://www.eac.gov/documents/2017/10/17/eavs-deep-dive-early-absentee-and-mail-voting-data-statutory-overview/>

²⁷<https://www.npr.org/2018/10/17/657928248/early-voting-changes-in-north-carolina-spark-bipartisan-controversy>

²⁸<https://www.npr.org/2018/10/17/657928248/early-voting-changes-in-north-carolina-spark-bipartisan-controversy>

²⁹ <https://www.npr.org/2012/11/06/164389320/floridas-early-voting-outcome-differs-from-2008>

³⁰ <https://www.aclu.org/facts-about-voter-suppression>

³¹ <https://www.motherjones.com/politics/2019/01/federal-court-blocked-wisconsin-republican-early-voting/>

³² <http://www.msnbc.com/msnbc/ohio-early-voting-cuts-could-be-stopped#51941>

³³ <https://www.texastribune.org/2019/10/10/texas-temporary-voting-access-young-rural-voters/>

³⁴ <http://www.msnbc.com/msnbc/why-early-voting-cuts-will-hit-blacks-hardest>

suppression efforts have been challenged (successfully) in courts, but other states are continuing to consider similar cutbacks to early voting.³⁵ Reducing early voting (or creating confusion about early voting) likely increases the chances that some of those voters will vote on Election Day,³⁶ potentially creating longer lines.³⁷

Depriving States and Localities of Resources

Creating longer lines on election day is another form of voter suppression that is often harder to track. By depriving states and localities of necessary resources to have adequate early voting, poll worker training, improved voting infrastructure, and technology updates, the voting process on election day can take significant time. Many jurisdictions have older, outdated voting equipment that is prone to malfunction, and Congress has not provided any meaningful resources to states to update their voting machines since 2002. Since most employers do not provide paid time off to vote, and the U.S. has not made election day a national holiday or mandated paid time off to vote, many eligible voters cannot take unpaid leave from work to wait in line for multiple hours in order to vote. Vote suppressors recognize this dynamic, and by starving localities for resources, the actual in-person voting process can take longer than many Americans are able to spend.

The \$380 million in election security grants that Congress appropriated to states in 2018 was a decent start. However, with more than 178,000 individual precincts, nearly 117,000 distinct polling locations,³⁸ and more than 8,000 voting jurisdictions each running elections in their own way, that funding is just a fraction of what is needed. Elections officials are often left to fend for themselves, and significantly more investments must be made in state and local election infrastructure. In addition to strengthening cybersecurity of elections systems, such as by allowing voter verifiable paper ballots and risk-limiting audits (which Colorado and Rhode Island have pioneered), elections officials need more funding to update voting equipment that is **not** connected to the Internet, hire more poll workers, and do additional training for officials to ensure the integrity of our elections.

Solutions

With a mostly complicit Department of Justice under President Trump and Attorney General Bill Barr, non-profit and civic organizations have largely been filling the void to fight back against voter suppression efforts. Common Cause has partnered with the Lawyers' Committee for Civil Rights Under Law, which oversees the national hotline that fields calls from voters and volunteers during early voting and on Election Day. Lawyers from that hotline take calls from citizens each election year, including from thousands of our trained election protection

³⁵ <https://www.aclu.org/facts-about-voter-suppression>

³⁶ <http://www.msnbc.com/msnbc/why-early-voting-cuts-will-hit-blacks-hardest>

³⁷ <https://www.npr.org/2018/10/17/657928248/early-voting-changes-in-north-carolina-spark-bipartisan-controversy>

³⁸ https://www.eac.gov/assets/1/6/2016_EAVS_Comprehensive_Report.pdf

volunteers stationed at hundreds of precincts across the country. Our volunteers are the eyes and ears of the election, helping to answer voters' questions, solve problems at the polls, and identify illegal behavior for elevated action in real time. We ensure that voters know their rights, and that those rights are protected.

For the 2018 election, Common Cause recruited, trained, and deployed more than 6,500 volunteers across 30 states, including 3,500 volunteers who were placed in key precincts in more than 150 counties in nine critical states. We led recruitment efforts in many states and organized over 100 separate trainings, both in-person and via webinar. We worked with coalition allies to develop training curricula that were accurate to local rules and procedures, and equipped volunteers to deal with problems as they arose. Our trainings reminded volunteers of the historic importance of poll monitors, and provided them with educational materials, including "Know Your Rights" cards, that they could share with voters.

Litigation has certainly been an important tool to fight back against voter suppression efforts, as some of my fellow witnesses have outlined. Additionally, there are critical efforts that we lead in states to overcome suppression efforts. For states with the initiative process, we have helped lead campaigns to protect and expand the right to vote in recent years. We helped pass citizen initiatives to provide automatic voter registration and other pro-voter reforms in Michigan and Nevada. And when there is a reform-friendly legislature, we look for legislative opportunities. Earlier this year, Common Cause New York led the "Let NY Vote" campaign, which successfully pushed for New York to enact a package of voting reforms, including pre-registration of 16- and 17-year-olds, early voting, voter registration portability, and others.³⁹

At the federal level, the For the People Act (H.R. 1), which passed the House this year but which Senate Majority Leader McConnell continues to block, contains many strong provisions to overcome vote suppression efforts. The historic legislation includes automatic voter registration, same day registration, expanded early voting, and stopping voter purges and signature mismatches, among other key provisions. The SHIELD Act, which was marked up yesterday in this committee and is expected to be voted on by the full House of Representatives next week, includes the Deceptive Practices and Voter Intimidation Prevention Act to help stop voter suppression efforts. And although it is outside this Committee's jurisdiction, passing the Voting Rights Advancement Act (HR 4) would update the coverage formula for the Voting Rights Act and ensure that many voter suppression tactics could no longer be used to silence the voices of American voters.

Conclusion

Voter suppression is ultimately about power. Voter suppression impacts who gets a seat at the table and who is often left voiceless on the outside. Our democracy is in a crisis, and voting remains one of the key ways that Americans can have their voices heard. For nearly 50 years, Common Cause has helped to protect and strengthen the right to vote. In recent years,

³⁹ <https://letnyvote.org/>

Republicans are largely guilty of trying to suppress votes, but in 10 or 20 years, it may be Democrats who are guilty of this practice. Common Cause called out Democrats when they undermine democracy, and Common Cause will continue to call out Republicans who are suppressing votes of eligible Americans around the country. Some people will say that because voter turnout is up, voter suppression does not really have an impact. That is a ridiculous and flawed argument. Just because people overcome barriers to voting does not mean that voter suppression is acceptable. Vote suppression might lead to a short-term, narrow gain for Republicans now, but suppressing votes of Americans does long-term, lasting damage to our democracy. Until every eligible American can have their voices heard and votes counted, we at Common Cause will continue to fight with every tool at our disposal to stop voter suppression.

Thank you again for the opportunity to submit testimony.